(16,324.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 192.

DANIEL DULL AND NELLIE M. DULL, PLAINTIFFS IN ERROR,

vs.

JOHN E. BLACKMAN, ED. PHELAN, E. R. DUFFIE, AND GEORGE F. WRIGHT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 21, 1897.

a Pleas before the supreme court of Iowa in a cause therein tried and determined between John E. Blackman, plaintiff and appellee, and George F. Wright and others, defendants, and Ed. Phelan, intervenor, appellees, and Daniel Dull and Nellie M. Dull, defendants, appellants.

Be it remembered that on the 22d day of December, 1894, there was filed in the office of the clerk of the supreme court of Iowa appellants' abstract of the record in the words and figures following, to wit:

1 "In the Supreme Court of Iowa, January Term, 1895.

JOHN E. BLACKMAN, Appellee,
vs.
GEORGE F. WRIGHT, A. W. ASKWITH, E. R. DUFFIE, Ed. Phelan, Intervenor, Appellees, and Daniel Dull and Nellie M. Dull, Appellants. } In Equity.

Appeal from Pottawattamie county district court—Hon. H. E. Deemer, judge.

Flickinger Bros., attorneys for appellants.
E. R. Duffie and Wright & Baldwin, attorneys for appellees.

Appellants' Abstract of Record.

2 Be it remembered, that on the 29th day of February, 1892, the plaintiff, John E. Blackman, files his

Petition in Equity,

alleging:—

1st. For a cause of action against the defendant the plaintiff states that on and prior to the 2nd day of August, 1889, he was the owner in fee of the following-described real estate, situated in the county of Pottawattamie, State of Iowa, to wit:

The S. ½ of section 4, the N. E. ¼ of section 9, the N. E. ¼ of the S. E. ¼ of section 9, and about 31.06 acres of the S. E. ¼ of the S. E. ¼ of section 9, more particularly described as follows:

Commencing at the southeast corner of section 9, thence north 80 rods, thence west 32 rods, to the centre of Mosquito creek, thence along the centre of the channel of Mosquito creek to the south line of section 9, thence east 74 rods to the place of beginning, all of said above-described land being in township 76, range 42.

2nd. That on the 19th day of July, 1889, the plaintiff being in need of funds to be used in the prosecution of an enterprise in the city of New York, made and entered into an oral agreement with the defendant at the said city of New York, by the terms of which the defendant was to furnish and advance to the plaintiff moneys as they might be needed and called for, not to exceed the sum of

$10,000 and as security for the repayment of any and all moneys so advanced by the defendant to the plaintiff, the plaintiff
3 agreed to make, execute and deliver to the defendant a deed to the above-described premises, which deed was to be accepted and recorded by the defendant upon the execution of a statement in writing signed by the defendant, showing the terms and conditions upon which he took title to said land from the plaintiff.

3rd. It was a further part of said agreement entered into between the parties that the defendant might sell the lands above described, first obtaining the plaintiff's consent to the terms and conditions of the sale, and that he might execute a deed to the purchaser of any of said lands so sold, and after deducting from the purchase price received therefor the sum or sums of money which he had at that date actually advanced to the plaintiff under said agreement, with interest from the date of such advancement to the date when the purchase-money from the sale of said lands should be received by the defendant, that he should then pay the balance, if any, over to this plaintiff.

4th. It was a further condition of said agreement that defendant should take possession of all of said land, rent the same on the best terms possible, and after paying the taxes and assessments against the same account to the plaintiff for any balance of such rents so received by him.

5th. It was a further condition of said agreement that if said lands should not be sold by the defendant, that then and in that case, whenever the plaintiff repaid to the defendant the sum or sums of money advanced and received by him, with interest thereon from the date of advancement to the date of payment, that the defendant would reconvey said lands to the plaintiff.

6th. The plaintiff further states that on or about the 2nd
4 day of August, 1889, he made a deed to said lands to the defendant, and delivered the same to one Charles Haldane, in the city of New York, together with the memoranda containing the terms and the conditions upon which the defendant was to hold the title to said land, for delivery to the defendant, and to be accepted and recorded by him only upon signing and returning to the plaintiff the memoranda aforesaid.

7th. That said deed of conveyance and said memoranda were by the said Haldane transmitted by mail to the said defendant, at Council Bluffs, Iowa, and the defendant received and recorded the said deed of conveyance, but neglected and refused to sign and deliver to the plaintiff the memoranda or writing showing the conditions upon which he took the conveyance to said land.

8th. That notwithstanding said Wright took said deed of conveyance, and caused the same to be recorded, he has, at all times since the date thereof, neglected and refused to advance to the plaintiff any part of the $10,000 to be advanced by him, and for which he took said conveyance as security, and has wholly failed and refused to sign and deliver to the plaintiff any writing showing the terms and conditions upon which he took the conveyance to said premises.

9th. That on many occasions prior to the commencement of this action the plaintiff has demanded from the defendant a reconveyance of said premises, but the defendant has at all times neglected and refused to make a reconveyance thereof.

10th. That the defendant has no equitable interest in said land and never did have. That all the right or interest he has
5 therein was by virtue of said agreement above set forth, the terms of which he has never fulfilled on his part, and that the plaintiff is entitled to a reconveyance of said premises without the payment to the defendant of any sum of money whatever.

11th. That the defendant since the conveyance to him, above mentioned, has had possession of the land aforesaid, and has received the rents and profits thereof, amounting to about $3,000, and that he has wholly failed and refused to account to the plaintiff for said rents and profits.

12th. Wherefore the plaintiff prays that the defendant may be required to reconvey to the plaintiff the premises first hereinbefore described, and that in case of his neglect or refusal so to do, within a time to be fixed by the court, that then the clerk of this court be appointed a commissioner to make such conveyance, and that an accounting be had of the rents and profits of said land, received by the defendant, and that the plaintiff have judgment against him therefor, and that the plaintiff have such other and further relief in the premises as justice and equity may require.

JOHN E. BLACKMAN, *Plaintiff.*

STATE OF NEBRASKA, } ss:
Douglas County, }

E. R. Duffie, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above-entitled cause; that he has personal knowledge of the facts above set forth, from conversation with both parties, and that he verily believes the facts above set forth are true.

E. R. DUFFIE.

6 Subscribed in my presence and sworn to before me, this 27th day of February, A. D. 1892.

[SEAL.] JOHN L. CARR,
Notary Public, Douglas County, Nebraska.

And on the *17th day of September, 1892*, Edward R. Phelan files his

Petition of Intervention

as follows:

In the District Court of Pottawattamie County, State of Iowa.

JOHN E. BLACKMAN, Plaintiff, }
vs.
GEORGE F. WRIGHT *et al.*, Defendants. }

Comes now Edward Phelan, and intervening in the case above entitled, shows to the court that he is interested in the subject-

matter of the action as against all the defendants, and that his interest therein arises as follows, to wit:

Paragraph 1. On the 30th day of January, 1892, the plaintiff, John E. Blackman, was the equitable owner of all the lands described in his petition filed herein, and on said day he made, executed and delivered to this intervenor a deed of all of said lands, which said deed contained general covenants of warranty and was absolute in form, but was intended nevertheless to secure the repayment to intervenor of certain moneys that day loaned and advanced to the said Blackman, and certain sums due one E. R. Duffie
7 for legal services then performed and thereafter to be rendered the said Blackman, and $1,000, more or less, due E. P. Savage from said Blackman.

Paragraph 2. That thereafter, and on the 14th day of September, 1892, this intervenor purchased said lands from the said Blackman, and by the terms of said purchase said deed of January 29, 1892, was to stand as an absolute deed and to convey to this intervenor the full, absolute and *and* unquali-ed title to the land therein described, and the said Blackman was to and did release to this intervenor any and all claim of right, title or interest theretofore held by him in or to said lands.

Paragraph 3. Intervenor further shows to the court that prior to the commencement of this action, and on the 2nd day of August, 1889, the said John E. Blackman, and Mary, his wife, conveyed all the lands in plaintiff's petition described, to the defendant, George F. Wright, by special warranty deed; that said conveyance while absolute in form was intended as a mortgage to secure to the said George F. Wright the payment of moneys he might thereafter advance to the said Blackman, not exceeding in amount the sum of ten thousand dollars, the agreement between the said Blackman and the said Wright in relation to said deed and conveyance being oral and to the effect that the said Wright should loan and advance to the said Blackman sums of money from time to time as the needs of said Blackman might require, not, however, to exceed in the aggregate the sum of ten thousand dollars, and the said Blackman on his part agreed to and did convey to said Wright the lands described in the plaintiff's petition, as security for the money so agreed to be advanced by the defendant, and it was a further part of said parol agreement that the defendant, while he held the title to said
8 lands, might on consent of plaintiff, first had, sell the same, or portions or parcels thereof, at not less than their fair market value, and apply the proceeds of such sales to the credit of said Blackman and the repayment of any sums by him advanced to Blackman under said agreement.

Paragraph 4. Intervenor further shows to the court that the defendant never loaned or advanced to the plaintiff any money in any amount under the agreement set forth in paragraph 3 hereof, and that the plaintiff is not now, nor has he at any time been indebted to the defendant in any amount whatever, but on the contrary, defendant is indebted to plaintiff in a large amount on account of the rents and profits received from said land since the making of said

deed, and intervenor charges the fact to be that while the legal title to all the land in plaintiff's petition described is held by said Wright he is not the equitable owner thereof, but that the plaintiff from the time of conveying said lands to defendant up to the time that this intervenor took a conveyance from him, was the full, equitable owner of all of said lands and entitled to conveyance of the legal title thereof from the said Wright, and intervenor is now the equitable owner of said lands, and the defendant should in equity and good conscience convey to him the legal title thereto.

Paragraph 5. Intervenor states that on the — day of February, 1886, one Daniel Dull was the owner of all the lands in plaintiff's petition described, and a large body of other lands, amounting altogether to about 1,400 acres, and that on said date he mortgaged the same to one W. W. Holcomb to secure a loan of $10,800, due in two years from the date of said mortgage, with 6 per cent. interest thereon. That the lands conveyed by said mortgage are the
9 following, to wit: S. W. ¼ section 10; S. E. ¼ of S. E. ¼ section 3; S. ½ of S. W. ½ of section 3; S. W. ¼ section 4; E. ½ of N. E. ¼ section 9; N. E. ¼ of S. E. ¼ section 9; W. ½ of N. E. ¼ section 10; N. W. ¼ of N. W. ¼ of S. E. ¼ section 10; N. E. ¼ of N. W. ¼ section 3; S. E. ¼ of N. E. ¼ section 3; W. ½ of S. E. ¼ section 3; S. E. ¼ of S. E. ½ section 3; N. ½ of S. W. ¼ section 3; S. E. ¼ of section 4; W. ½ of N. E. ¼ section 9; S. E. ¼ of S. E. ¼ section 10, and 31 and $\frac{8}{10}$ acres out of the S. E. ¼ of S. E. ¼ section 9, more particularly described as follows, to wit: Commencing at the S. E. corner section 9; running thence north eighty (80) rods; thence west thirty-two (32) rods to the center of Mosquito creek, thence along the center channel of said creek to the south line of said section nine (9); thence east seventy-four (74) rods to the place of beginning. All of said lands being in township 76 of range 42 west of the fifth principal meridian, and containing altogether 1,386 acres of land as per Government survey.

Paragraph 6. That the said Daniel Dull, as your petitioner is informed from the records of this county, and charges the fact to be, is still the owner of all the lands in said mortgage described, excepting those described in plaintiff's petition, which he sold and conveyed to the plaintiff in this action on the 5th day of June, 1889, and excepting also the S. E. ¼ of S. E. ¼ of section 10, above described, which was sold by said Dull in 1889, and by Holcomb released from the lien of his mortgage, and the intervenor charges the fact to be that the lands covered by said Holcomb mortgage and still owned by said Dull are of the value of $30,000 or more, and good and ample security for any amount due in said mortgage. That intervenor does not know and cannot ascertain what amount is now due on the said mortgage indebtedness, said Holcomb
10 refusing to disclose the same to the plaintiff herein, but the said Holcomb refuses to take any steps to foreclose his said mortgage or to collect the amount due thereon from the said Dull, although the same is long past due, and claims to hold the land in plaintiff's petition described with the other lands included therein as security for his debt, and by refusing to take steps to enforce the collec-

tion thereof, is allowing the same to accumulate and increase, to the prejudice of intervenor if his lands should ultimately become liable for the same or any part thereof.

Paragraph 7. Intervenor further states that the lands covered by said Holcomb mortgage and still owned by said Dull, are and were at the date of the execution of said mortgage of greater value per acre than the lands in plaintiff's petition described, and if said last-mentioned lands are charged at all with the payment of said mortgage indebtedness they should be charged only at the rate of three dollars per acre, while the lands still held by Dull should be charged at the rate of four dollars and fifty cents ($4.50) per acre, or in that proportion.

Paragraph 8. Intervenor further states that the defendant herein and Chilio! M. Farrar, John Trefts and A. W. Askwith claim to have some interest in and to said land in plaintiff's petition described, adverse to the title of intervenor, but he alleges that any claim, right or title which said last-named parties have or claim to have in or to the same is junior and inferior to his, and that his title should be qui-ted against all adverse claims.

Wherefore, intervenor prays that all parties to this suit, and all other parties herein named, viz., Daniel Dull, C. M. Farrar, John Trefts, and A. W. Askwith, and W. W. Holcomb be made
11 parties hereto, and may be required to answer this, his petition of intervention, and that all said parties save W. W. Holcomb may be barred and forever estopped from having or claiming any right or title to the premises in plaintiff's petition described, adverse to the title of intervenor, and that as to said Holcomb, he may be required to disclose the amount due upon his mortgage and to foreclose the same, and to enforce the amount due thereon against the lands therein described and yet owned by the said Daniel Dull, before the lands of intervenor shall be charged with any of said mortgaged indebtedness, and for any other, further or different relief which equity and good conscience may require.

E. R. DUFFIE,
Attorney for Intervenor.

STATE OF NEBRASKA, } ss:
Douglas County, }

Edward R. Duffie, being first duly sworn, deposes and says that he is the attorney for the intervenor named in the foregoing petition of intervention; that he has heard said petition read and knows the contents thereof, and the statements therein contained are true, as he verily believes; that he has examined the records and made all inquiries relating to the claims of the various parties to this action, and has as great or greater knowledge of the facts as intervenor himself.

E. R. DUFFIE.

Sworn to before me and subscribed by the said Edward Phelan, this 17th day of September, 1892.

[SEAL.] H. W. PENNOCK,
Notary Public, Douglas County, Nebraska.

12 And on the *22nd day of September, 1892*, the plaintiff, John E. Blackman, files his

Amendment to His Petition

as follows:

Now comes the plaintiff in the above-entitled action, and amends his petition, filed herein, by making W. W. Holcomb, Chiliol M. Farrar, John Trefts, Daniel Dull, and A. W. Askwith additional defendants in the action, and for cause, states:

Paragraph 1. That the said Chiliol M. Farrar, W. W. Holcomb, John Trefts, Daniel Dull, and A. W. Askwith, claim to have some interest in and to the lands described in the petition herein, adverse to the title and interest of plaintiff therein; but the plaintiff alleges the fact to be that any right, title, or interest which said defendants have or claim to have in or to said lands is junior and inferior to the title of the plaintiff herein; and that the plaintiff's title should be quieted against all adverse claims of all of said defendants.

Wherefore plaintiff prays, as in his original petition, and that all of the parties hereto may be barred and forever estopped from having or claiming any right or title to the premises, in plaintiff's petition described, adverse to the title of the plaintiff, and for such other or further relief as may be just and equitable.

E. R. DUFFIE,
Attorney for Plaintiff.

STATE OF IOWA, }
Pottawattamie County, } *ss:*

13 I, E. R. Duffie, being first duly sworn, upon oath depose and say, that I have personal knowledge of the facts above set forth, from conversations held with both parties, and that I verily believe the facts set forth above are true.

E. R. DUFFIE.

Subscribed in my presence and sworn to before me, this 7th day of October, A. D. 1892.

T. S. CAMPBELL,
Clerk District Court.

And on the 13th day of October, 1892, the plaintiff, John E. Blackman, files his

Amended Petition in Equity

as follows:

Paragraph 1. For a cause of action against the defendants, the plaintiff states that on and prior to the 2nd day of August, 1889, he was the owner in fee of the following-described real estate, situated in the county of Pottawattamie, State of Iowa, to wit:

The S. ½ of section 4, the N. E. ¼ of section 9, the N. E. ¼ of the S. E. ¼ of section 9, and about 31.06 acres of the S. E. ¼ of the S. E. ¼ of section 9, more particularly described as follows:

Commencing at the southeast corner of section 9, thence north 80 rods; thence west 32 rods to the centre of Mosquito creek; thence

along the centre of the channel of Mosquito creek to the south line of section 9; thence east 74 rods to the place of beginning; all of said above-described land being in township 76 of range 42.

14 Paragraph 2. That in the month of July, 1889, the plaintiff being in need of funds, made and entered into an agreement with the defendant, George F. Wright, at the city of New York, by the terms of which the defendant Wright was to furnish the plaintiff moneys as they might be needed and called for, not to exceed the sum of $10,000, and as security for the repayment of any and all moneys so advanced by the defendant Wright to the plaintiff, the plaintiff agreed to make, execute and deliver to the defendant Wright a deed to the above-described premises, which deed was to be accepted and recorded by the defendant Wright, upon the execution of a statement in writing, signed by the said Wright, showing the terms and conditions upon which he took title to said land from the plaintiff.

Paragraph 3. It was a further part of said agreement entered into between the parties, that the defendant Wright might sell the lands above described, first obtaining the plaintiff's consent to the terms and conditions of the sale, and that he might execute a deed to the purchaser of any of said lands so sold, and after deducting from the purchase price received therefor the sum or sums of money which he had at that date actually advanced to the plaintiff under said agreement, with interest from the date of such advancement to the date when the purchase-money from the sale of said lands should be received by the defendant Wright, that he should then pay the balance, if any, over to this plaintiff.

Paragraph 4. It was a further condition of said agreement, that the defendant Wright should take possession of all of said land, rent the same on the best terms possible, and after paying the taxes and assessments against the same, account to the plaintiff for any balance of such rents so received by him.

15 Paragraph 5. It was a further condition of said agreement, that if said lands should not be sold by defendant Wright, then and in that case, whenever the plaintiff repaid the defendant Wright the sum or sums of money advanced and received by him, with interest thereon from the date of advancement to the date of payment, that the said Wright would reconvey the said lands to the plaintiff.

Paragraph 6. The plaintiff further states, that on or about the 2nd day of August, 1889, he made a deed to said lands to the defendant Wright, and delivered the same to one Charles Haldane, in the city of New York, and instructed the said Haldane to deliver the same to said Wright, when said Wright signed and returned by mail to this plaintiff a memoranda containing the terms and conditions of the agreement made between the plaintiff and the defendant Wright, relating to such conveyance, and the conditions upon which the said Wright was to hold the title to said land, and to be accepted and recorded by him only upon signing and returning to the plaintiff the memoranda aforesaid.

Paragraph 7. That said deed of conveyance and a memoranda

were by the said Haldane transmitted by mail to the said Wright, at Council Bluffs, Iowa, and the defendant Wright received and recorded the said deed of conveyance, but neglected and refused to sign and deliver to the plaintiff a memoranda or writing showing the conditions upon which he took the conveyance to said land.

Paragraph 8. That notwithstanding said Wright took said deed of conveyance, and caused the same to be recorded, he has, at all times since the date thereof, neglected and refused to advance
16 to the plaintiff any part of the $10,000 agreed to be advanced by him, and for which he took said conveyance as security, and has wholly failed and refused to sign and deliver to the plaintiff any writing showing the terms and conditions upon which he took the conveyance to said premises.

Paragraph 9. That on many occasions prior to the commencement of this action the plaintiff has demanded from the defendant a reconveyance of said premises, but the defendant has at all times neglected and refused to make a reconveyance thereof.

Paragraph 10. That the defendant has no equitable interest in said land, and never did have. That all the right or interest he has therein was by virtue of said agreement above set forth, the terms of which he has never fulfilled on his part, and that the plaintiff is entitled to a reconveyance of said premises without the payment to the said Wright of any sum of money whatever.

Paragraph 11. That the defendant Wright, since the conveyance to him, above mentioned, has had possession of the land aforesaid, and has received the rents and profits thereof, amounting to $3,000 or more, and that he has wholly failed and refused to account to the plaintiff for said rents and profits.

Paragraph 12. Plaintiff further states, that on the — day of February, 1886, one Daniel Dull was the owner of all the lands in plaintiff's petition described, and a large body of other lands, amounting altogether to about 1,400 acres, and that on said date he mortgaged the same to one W. W. Holcomb to secure a loan of $10,700 due in two years from the date of said mortgage, with 6 per cent. interest thereon; that the lands conveyed by said mortgage are the following, to wit:

17 S. W. ¼ of section 10, S. E. ¼ of S. E. ¼ of section 3, S. ½ of S. W. ¼ of section 3, S. W. ¼ of section 4, E. ½ of N. E. ¼ of section 9, N. E. ¼ of S. E. ¼ of section 9, W. ½ of N. E. ¼ of section 10, N. E. ¼ and N. W. ¼ of S. E. ¼ of section 10, N. E. ¼ of N. W. ¼ of section 3, S. E. ¼ of N. E. ¼ of section 3, W. ½ of S. E. ¼ of section 3, S. E. ¼ of S. E. ¼ of section 3, N. ½ of S. W. ¼ of section 3, S. E. ¼ of section —. W. ½ of N. E. ¼ of section 9, S. E. ¼ of S. E. ¼ of section 10, and 31 $\frac{6}{100}$ acres out of the S. E. ¼ of S. E. ¼ of section 9, more particularly described as follows:

Commencing at the southeast corner of section 9, running thence north 80 rods; thence west 32 rods to the center of Mosquito creek; thence along the center of the channel of said creek to the south line of said section 9; thence east 74 rods to the place of beginning; all of said lands being in township 76 of range 42 west of the fifth

principal meridian, and containing altogether 1.386 acres of land as per Government survey.

Paragraph 13. That the said Daniel Dull, as this plaintiff is informed from the records of this county, and charges the fact to be, was, at the commencement of this action, the owner of all the lands in said mortgage described, excepting those described in plaintiff's petition, which he sold and conveyed to the plaintiff in this action, on the 5th day of June, 1889, and excepting also the S. E. ¼ of the S. E. ¼ of section 10, above described, which was sold by said Daniel Dull in 1889, and by Holcomb released from the lien of his mortgage, and plaintiff charges the fact to be that the lands covered by said Holcomb mortgage, and still owned by the said Dull, are of the value of $30,000 or more, and good and ample security for any amount due on said mortgage. That plaintiff does not know
18 and cannot ascertain what amount is now due on the said mortgage indebtedness, said Holcomb refusing to disclose the same to the plaintiff herein; but the said Holcomb refuses to take any steps to foreclose his said mortgage or to collect the amount due thereon from the said Dull, although the same is long past due, and claims to hold the land in plaintiff's petition described with the other lands included in his said mortgage as security for his debt, and by refusing to take steps to enforce the collection thereof, is allowing the same to accumulate and increase, to the prejudice of the plaintiff, if the lands should ultimately become liable for the same or any part thereof.

Paragraph 14. Plaintiff further states that the lands covered by said Holcomb mortgage and still owned by said Dull are and were at the date of the execution of said mortgage of greater value per acre than the lands in plaintiff's petition described; and if said last-mentioned lands are charged at all with the payment of said mortgage indebtedness, they should be charged only at the rate of three dollars per acre, while the lands still held by said Dull should be charged at the rate of $4.50 per acre, or in that proportion.

Paragraph 15. Plaintiff further states that the defendant herein, George F. Wright, and Chilion M. Farrer, John Trefts and A. W. Askwith, and Nettie Dull, claim to have some interest in and to said land in plaintiff's petition described, adverse to the title of plaintiff; but he alleges that any claim, right or title which said last-named parties have or claim to have in or to the same, is junior and inferior to his, and that his title should be quieted against all said adverse claims.

Wherefore, the plaintiff prays that the defendant, George
19 F. Wright, may be required to reconvey to the plaintiff the premises first hereinbefore described, and that in case of his neglect or refusal so to do within a time to be fixed by the court, that then the clerk of this court be appointed a commissioner to make such conveyance, and that an accounting of the rents and profits of said land received by the said Wright, or with which he should stand chargeable, and that the plaintiff have judgment against him therefor.

That the defendant, W. W. Holcomb, be required to disclose the

amount due upon his mortgage, and to foreclose the same, and to enforce the amount due thereon against the lands covered thereby and yet owned by the defendant, Daniel Dull, before the lands of plaintiff shall be charged with any of said mortgage indebtedness, or for any other and further or different relief touching said Holcomb mortgage as to the court shall seem equitable and just, or the plaintiff entitled to receive.

That all the other defendants be required to answer this petition, stating what claim they make to the plaintiff's aforesaid land, and that they be barred and forever estopped from having or claiming any right or title of the plaintiff, and that the plaintiff have any general equitable relief to which he may be entitled under the facts herein set forth or established on the trial.

E. R. DUFFIE,
Attorney for Plaintiff.

STATE OF NEBRASKA, } ss:
Douglas County, }

E. R. Duffie, being first sworn, deposes and says that he is attorney for the plaintiff in the above-entitled action; that he drew the foregoing amended petition, and knows the contents thereof, and that the statements therein are true, as he verily believes.

That he has possession of the plaintiff's paper relating to the land described in the petition, and has made a full examination of the same and of the records of Pottawattamie county, touching the title to said land, and has had several interviews relating thereto with the defendant, George F. Wright, and said Wright's claim thereto, and that from the knowledge thus derived and from interviews and correspondence with the plaintiff he believes he is as fully acquainted with the facts as the plaintiff himself, and he verifies this petition on information obtained, as above set forth, and because the plaintiff is now in the city of New York and a non-resident of the State.

E. R. DUFFIE.

Sworn to before me and subscribed in my presence by the said E. R. Duffie, this 13th day of October, 1892.

[SEAL.] J. T. PATCH,
Notary Public, Douglas County, Nebraska.

And on the 9th day of September, 1892, the defendant, George F. Wright, files his

Answer to the Petition of the Plaintiff

as follows:—

Answering the petition of the plaintiff, filed herein, the defendant states—

That he admits that on or prior to August 2nd, 1889, the plain-

tiff was the owner in fee of the lands described in the peti-
21 tion; and admits that on August 2nd, 1889, the said plaintiff conveyed said lands to the defendant, by deed of general warranty, which deed was accepted by the defendant, and has been recorded in the office of recorder of deeds of Pottawattamie county, Iowa.

The defendant denies that said deed was made, executed and delivered to him by *defendant*, upon any condition whatever, and alleges the truth to be that said deed was made upon a valid consideration, which has been paid, and that the defendant holds good and absolute title to said premises, under said deed of conveyance.

Cross-petition.

Defendant further answering, and by way of cross-petition, states:—

Paragraph 1. That on the 2nd day of August, 1889, the plaintiff herein, being then the owner thereof, conveyed to him, by warranty deed, the following-described premises, to wit:—

The south half of section 4, the N. E. ¼ of section 9, the N. E. ¼ of the S. E. ¼ of section 9, and about 31.06 acres of the S. E. ¼ of the S. E. ¼ of section 9, more particularly described as follows:—

Commencing at the southeast corner of section 9, thence north eighty rods, thence west 32 rods, to the center of Mosquito creek to the south line of section 9, thence east 74 rods to the place of beginning, all of said described land being in township 76, of range 42, Pottawattamie county, Iowa.

Paragraph 2. That prior to said conveyance, one Daniel
22 Dull was the owner in fee of the said above-described premises, and was the grantor of the said John E. Blackman, from whom defendant derived his title. That when said Daniel Dull was the owner thereof he executed a mortgage on said premises, together with a large tract of other lands, to one W. W. Holcomb, which said mortgage was made to secure the payment of about $10,000, due from the said Daniel Dull to said Holcomb; that the said Dull conveyed the lands, as above described, to the said plaintiff, John E. Blackman, by deed of general warranty, and while said Holcomb's mortgage was a lien thereon, said Holcomb mortgaged in addition to the lands above described about 1,000 acres, which additional lands are more than ample security for the payment of said mortgage. That the said Dull is still the owner of said additional lands, and that he should be charged with the payment of said mortgage in full; and that the lands, as above described, be released from the lien thereon.

Wherefore, the defendant asks a decree and an order making W. W. Holcomb a party defendant to this defendant's said cross-bill, and that the said W. W. Holcomb be required to first exhaust the property covered by his said mortgage, being the property described in this defendant's said cross-bill; and that the defendant's title, as above described, be quieted and confirmed, as to the plaintiff herein, and the said defendant, W. W. Holcomb, and that said

plaintiff be forever barred and estopped from having or claiming any right or title to said premises adverse to this defendant, and that the defendant have such other and further equitable relief as the court may deem just and equitable.

JOHN N. BALDWIN,
Attorney for Defendant.

23 STATE OF IOWA, } ss:
Pottawattamie County, }

I, George F. Wright, being first duly sworn, upon oath say that I am one of the defendants named in the above-entitled action; that I am acquainted with the contents of the foregoing answer, and that the same is true, as I verily believe.

GEO. F. WRIGHT.

Subscribed in my presence and sworn to before me, by the said George F. Wright, this 8th day of September, A. D. 1892.

[SEAL.] A. W. ASKWITH,
Notary Public.

And on the 21st day of June, 1893, the defendant, George F. Wright, files an

Amendment to His Answer

as follows:

Comes now, George F. Wright, defendant, and by way of amendment to his answer to petition, heretofore filed herein, and answering petition and all amendments thereto, states:

1st. That he denies all allegations in said amendments thereto contained, not heretofore controverted.

JOHN N. BALDWIN,
Attorney for Defendant George F. Wright.

And on the 2nd day of February, 1893, the defendants, Daniel Dull and wife, file their

Answer,

denying each and every allegation in plaintiff's petition, and
24 in the petition of intervention, and the amendments thereto contained.

On the 15th day of February, 1893, the defendants, Daniel Dull and wife, filed their separate

Amended Answer and Cross-petition

as follows:

Come now the defendants, Daniel Dull, and Nellie M. Dull, and in obedience to the order of the court herein, and for answer to the petition of the plaintiff, and of the intervenor, Edward Phelan, state:

1st. That as to the matters and facts stated in said petitions, save as

herein otherwise answered, they deny each and every allegation therein contained.

2nd. Further answering, by way of plea in abatement and bar to this action, and the action of the intervenor herein, these defendants state that an action is now pending in the State of New York, in and for Westchester county, in which this defendant, Daniel Dull, is plaintiff, and the plaintiff herein, John E. Blackman, together with George F. Wright, A. W. Askwith, defendants herein, and Edward Phelan, intervenor herein, are defendants; in which the same issues are made and the same relief sought as in the case at bar.

That said court is a court of general jurisdiction, and having full jurisdiction of the parties and subject-matter in controversy.

Subject to the foregoing plea in abatement, and bar to intervenor's action, and by way of

25 *Cross-petition and Cross-demand*

against the plaintiff, and the intervenor, Phelan, and their codefendants herein, these defendants state:

1st. That on the 25th day of June, 1869, Daniel Dull was the owner in fee-simple of the following-described land in Pottawattamie county, Iowa, to wit:

The south half of section four (4); the northeast quarter of section nine (9); the northeast quarter of the southeast quarter of section nine (9); and $31\frac{6}{10}$ acres out of the southeast quarter of the south east quarter of section nine (9), being the same part of the said last-mentioned forty-acre tract, heretofore conveyed to Daniel Dull by George F. Wright, all in township seventy-six (76), north of range forty-two (42), west of the fifth P. M., containing in all $551\frac{6}{10}$ acres.

2nd. That a short time prior to said 25th day of June, 1889, the plaintiff, John E. Blackman, intending to cheat and defraud this defendant, represented to him that a certain parcel of land on the southwest corner of Broadway and Fifty-first street, in the city of New York, which defendant had leased from one A. M. Lyon for a term of years, and upon which defendant had erected a substantial building, and which defendant then occupied, did not belong to said Lyon, but belonged to said Blackman, and that he was about to begin a suit against said Lyon and this defendant to eject him therefrom.

Said Blackman at the same time represented that the title to said land, until recently, had been vested in the heirs of one John Hopper (some two hundred in number), and that he had obtained
26 and held conveyances from said heirs, representing about 85 per cent. of the title, and that he had made complete arrangements by which he would shortly obtain conveyances from the remaining heirs.

3rd. This defendant, relying upon the truth of said statements, and representations so made by the plaintiff Blackman, and believing said statements and representations to be true, entered into a contract whereby he agreed to convey to said Blackman the Iowa

lands hereinbefore described, and said Blackman agreed to promptly prosecute his suit to recover said land at Broadway and Fifty-first street, New York city, at his own expense, and to a final determination; and in the event that he succeeded, he would give to defendant a conveyance thereof, and put him in possession thereunder; and before entering into said contract said Blackman expressly represented that he was the possessor of ample funds and property wherewith to prosecute said action.

4th. That the defendant, relying upon each of said representations, and being solely moved and induced thereby, on the 25th day of June, 1889, executed and delivered to the plaintiff Blackman a good and sufficient deed, with covenants of warrant, conveying to him the lands described in paragraph 1 hereof, and said Blackman, on the 30th day of August, 1889, caused the same to be recorded in Book 208, page 311, of the records of Pottawattamie county, Iowa.

5th. Defendants further allege that each and all of the representations so made by said Blackman were false and untrue, and were known so to be by him at the time of making the same. That in truth and in fact said Blackman had not at that time about 85 per cent. of the title of said Hopper heirs, nor as defendant is
27 informed and believes, more than 55 per cent. thereof; and he had not in fact any prospect or belief that he would ever acquire the whole or any part of said title, and in truth and in fact, of the portion of said title which he had acquired more than 25 per cent. had been conveyed or pledged by him to other persons, so that it was beyond his control; and that in truth and in fact said Blackman had not at the time of making said representations any funds or property wherewith to employ counsel or prosecute his claim to the property, and has never since that time been possessed of any such funds or property; and that said statements and representations were made by the plaintiff Blackman for the sole purpose of deceiving, cheating and defrauding this defendant.

6th. That immediately on discovering the fraud of the plaintiff Blackman, this defendant demanded of him a reconveyance of the property, and a rescission of the transaction, and that the said Blackman thereupon promised to reconvey said Iowa land to this defendant, but has wholly neglected and refused since the making of said promises so to do, and instead thereof began this action for the purpose of putting defendant to great expense and trouble, and compelling him to pay a sum of money for such reconveyance.

7th. Defendant further states that on the 2nd day of August, 1889, the plaintiff Blackman executed a quitclaim deed of the lands hereinbefore described, to George F. Wright, defendant herein which deed was wholly without consideration, and that said Wright, on the 16th day of November, 1891, without any right or authority from this defendant, executed a mortgage on said land to one A. W. Askwith, purporting to secure the payment of a sum of five thou-
sand dollars, which said mortgage defendant alleges, upon
28 information and belief, was executed without any consideration whatsoever, and with full knowledge of all the matters and facts hereinbefore alleged.

8th. That on the 30th day of January, 1892, the plaintiff Blackman executed another and additional conveyance of said land to the intervenor herein, Edward Phelan, but such conveyance, as defendant is informed and believes, was made without consideration, and with full knowledge of defendant's claim to the property, and of the fraud which had been perpetrated on him by Blackman.

9th. That on the 27th day of August, 1892, the intervenor, Phelan, executed and delivered to one Edward R. Duffie a mortgage upon said lands to secure to the said Duffie, who is an attorney-at-law herein, certain fees which the plaintiff Blackman had agreed to pay to the said Duffie for defending said Blackman against defendant's claim to said land, said Duffie at the time of making said contract well knowing the facts hereinbefore stated, and that the said Blackman had obtained a deed from this defendant by fraud and misrepresentation.

10th. That said Iowa lands are worth the sum of fifteen thousand dollars, and that the plaintiff Blackman has obtained possession of the same, and has, either personally or through the defendant George F. Wright collected the rents thereof, aggregating, as defendant is informed and believes, the sum of three thousand dollars. That the plaintiff Blackman is not only insolvent but has no visible or available property either real or personal.

11th. That this *plaintiff*, and each of his codefendants, and the grantees and mortgagees of said Iowa property, and each
29 one of them, at the time of acquiring a pretended interest therein well knew that the title to said real estate had been obtained from this defendant wholly without consideration, and through the fraud and deceit and misrepresentation of the plaintiff Blackman.

12th. That Nellie M. Dull, the wife of Daniel Dull, is now the owner of the property described in paragraph 1, of this cross-petition, under and by virtue of a warranty deed from her codefendant herein, Daniel Dull.

13th. That the Council Bluffs Savings Bank of Council Bluffs, Iowa, as defendant is informed and believes, claims some interest by purchase, or otherwise, of the five-thousand-dollar mortgage mentioned in paragraph 7, herein.

Wherefore, by reason of the premises, these defendants ask that the Council Bluffs savings bank and Edward R. Duffie be made additional parties to this action, and defendants to their cross-petition herein, and that the plaintiff, John E. Blackman, and their codefendants, George F. Wright, A. W. Askwith, and the intervenor Edward Phelan, and the Council Bluffs savings bank, and Edward R. Duffie, be required to answer this cross-petition within such time as the court shall determine, and that on final hearing a decree of this court be made cancelling and annulling the deed from these defendants to the plaintiff herein, and declaring same to be utterly null and void; and that the deed from plaintiff Blackman to the defendant George F. Wright be cancelled and held for naught, and that the deed from the plaintiff to the intervenor Phelan, herein, be cancelled and held for naught; and that the mortgage executed by

defendant George F. Wright to his codefendant, A. W. Askwith, be cancelled and held for naught. And that it be further decreed and determined that neither of the defendants or the plaintiff herein has any lien interest or right to the property in controversy, and that the title of these defendants be quieted in and to all of said property as against the adverse claims of the plaintiff and all of said codefendants; and that an accounting of the rents and profits thereof be had, and that judgment be rendered in favor of these defendants in the sum of $3,000, with interest therefor.

And these defendants pray for such other and further relief as to the court may seem equitable in the premises.

FLICKINGER BROS.,
Attorneys for Defendants Daniel Dull and Nellie M. Dull.

And on the 29th day of May, 1893, the defendants, Daniel Dull and wife, file an

Amendment to Their Separate Answer and Cross-petition

as follows:—

Come now the defendants Daniel Dull and wife, and for an amendment to their answer and cross-petition, heretofore filed, and particularly the second paragraph of said answer, state:—

That since the filing of said answer and cross-petition the action mentioned in said paragraph 2nd, as pending in the supreme court of Westchester county, New York, has gone to a decree and final decision, as shown by "Exhibit A," a true copy of said decree and adjudication — hereto attached and made a part hereof.

That said decree is a complete adjudication of the rights of the parties in this controversy, and is a bar to the further prosecution of this action.

Wherefore defendants, Daniel Dull and wife, ask judgment as in their original answer and cross-petition prayed.

FLICKINGER BROS.,
Attorneys for Daniel Dull and Wife, Defendants.

"EXHIBIT A."

The People of the State of New York, by the grace of God, free and independent, to all to whom these presents shall come or may concern, Greeting:

Know ye, that we having examined the records and files in the office of the clerk of the county of Westchester, and clerk of the supreme court of said State for said county, do find a certain judgment and decree there remaining, in the words and figures following, to wit:

Folio 1. At a special term of the supreme court, Westchester county, held at the court-house, in the village of White Plains, this 20th day of May, 1893:

Present: Hon. Jackson O. Dykman, justice.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants.
} Decree.

2. This action coming on to be heard at a special term of
32 this court, at the court-house, in the village of White Plains, before Hon. Jackson O. Dykman, on the 3rd day of April, and the 6th and 16th days of May, 1893, and the court having made and filed its findings of fact and the conclusions of law, and the decision in favor of the plaintiff and against the defendants, which entitled the plaintiff to this judgment and decree, whereby the court found, among other things, that the plaintiff, on the 25th day of June, 1889, was the owner in fee-simple of certain lands in Pottawattamie county, Iowa, hereinafter described, which said lands plaintiff deeded to the defendant John E. Blackman, relying upon certain statements and representations made by said Blackman to plaintiff, which said statements and representations were false, and known by the defendant Blackman to be false and untrue, and which were made with intent to deceive plaintiff; and that plaintiff, relying upon the truth of said statements and representations, made said deed of said land in Pottawattamie county, Iowa, to said defendant Blackman, believing said statements and representations to be true.

4. The court having further found that after receiving said deed, said defendant Blackman commenced an action in the district court of Pottawattamie county, Iowa, against this plaintiff, Daniel Dull, and Nellie M. Dull, his wife, claiming to be the absolute owner of said lands, and asking that the said plaintiff and his wife be declared to have no claim or interest therein, and that all the defendants in this action were also parties to said action in the Iowa court, and became interested in said litigation by virtue of certain conveyances made by said Blackman and his grantees; and the court having granted a preliminary injunction on the 9th day of November, 1892, enjoining and restraining the defendant John E. Blackman from conveying or encumbering said lands or any part thereof,
33 and from further prosecuting against said Daniel Dull and Nellie M. Dull said suit in the district court of Pottawattamie county, Iowa, or permitting the same to be prosecuted, and from commencing or prosecuting any other person affecting the title of said Daniel Dull and Nellie M. Dull to said lands, which said injunction was served upon the defendant Blackman personally on the 15th day of November, 1892, in the city and county of New York, which said preliminary injunction has never been vacated or set aside:

Now, on motion of Martin J. Keogh, attorney for plaintiff, Daniel Dull, it is

Adjudged and decreed, that the deed of the lands hereinafter described, situated in Pottawattamie county, Iowa, made by the plain-

tiff Daniel Dull to the defendant John E. Blackman, which said deed bears date the 25th day of June, 1889, be and the same is declared and adjudged to be void and of no force or effect whatsoever, and said defendant John E. Blackman be and he hereby is ordered and directed to execute to the plaintiff Daniel Dull, a good and sufficient deed, conveying to the plaintiff said lands hereinafter described, which deed shall recite the findings and decision of this court.

It is further ordered, adjudged and decreed, that the defendant John E. Blackman be and he hereby is, and the defendants, Mary E. Blackman, George F. Wright, Asa W. Askwith (Asa being fictitious, Christian name unknown), Edward Phelan, Edward R. Duffie, be and each of them hereby is perpetually enjoined and forever restrained from prosecuting a certain action in the district court of Pottawattamie county, Iowa, affecting the title to said lands against this plaintiff, Daniel Dull, and his wife, Nellie M. Dull, or
34 either of them, and from executing any further or other conveyances of said lands, or from encumbering the same in any way.

The lands hereby directed to be so conveyed by said defendant John E. Blackman to the plaintiff Daniel Dull, are situated in Pottawattamie county, Iowa, and particularly described as follows, to wit:

The south half (S. $\frac{1}{2}$) of section numbered four (4), the northeast quarter (N. E. $\frac{1}{4}$) of section numbered nine (9), the northeast quarter of the southeast quarter (N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$) of section numbered nine (9), and $\frac{31}{100}$ acres out of the southeast quarter of the southeast quarter (S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$) of section numbered nine (9), (being the same part of said last-mentioned forty-acre tract heretofore conveyed to Daniel Dull by George F. Wright), all in township seventy-six (76), north of range forty-two (42) west of the 5th P. M., in all 551.06 acres.

It is further adjudged and decreed, that the plaintiff recover his costs and disbursements in this action, as taxed at $—, and have execution therefor.

J. C. DYKMAN,
Judge Supreme Court.

All of which we have caused by these presents to be exemplified, and the seal of our supreme court to be hereunto affixed.

Witness, Hon. J. F. Barnard, justice, at White Plains, the 24th day of May, in the year of our Lord one thousand eight hundred and ninety-three.

(Signed) JOHN H. DIGNEY, *Clerk.*

35 I, J. F. Barnard, presiding justice of the supreme court of New York, for the county of Westchester, do hereby certify that John H. Digney, whose name is subscribed to the preceding exemplification, is the clerk of said county of Westchester and clerk of the supreme court, for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further

certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated, White Plains, May 24th, 1893.

J. F. BARNARD, *Judge.*

STATE OF NEW YORK, } ss:
County of Westchester, }

—, John H. Digney, clerk of the supreme court of said State, in and for the county of Westchester, do hereby certify that J. F. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State, in and for the county of Westchester, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 24th day of May, 1895.

JOHN H. DIGNEY, *Clerk.*

And on the 11th day of July, 1893, the defendants, Daniel Dull and wife, file a

Second Amendment to Their Cross-petition

as follows:

36 Comes now Daniel Dull, and for an amendment to his cross-petition filed herein, and as paragraph 5½ thereof, and to be inserted therein as paragraph 5½, states:

5½. That at the time of the conveyance of the land in controversy the plaintiff Blackman, with the intent to defraud these defendants, had no intention of conveying to him the premises agreed to be conveyed, but subsequently conveyed the same to one A. M. Lyon, his landlord, and received as consideration for said conveyance the sum of ten thousand dollars, and this defendant has received no conveyance nor consideration of any kind whatsoever for said property so conveyed to said Blackman.

That said Blackman made said conveyance to said Lyon in fraud of the rights of this defendant and for the sole purpose of cheating and defrauding him in the premises, and as part of a conspiracy between him and his partner Haldane, who was a member of the firm of Wright, Baldwin & Haldane, of which firm the defendant, George F. Wright, was at the time a member.

That by reason of the fraudulent intent, purpose and acts of the said Blackman this defendant received no consideration whatever for the conveyance of said property to Blackman, and was defrauded thereby.

10½. For further amendment, and as paragraph 10½ to his cross-petition, this defendant states that the acts of the plaintiff Blackman, and of the defendants Wright, Phelan and Duffie, are collusive and the result of a conspiracy and collusion among themselves to defraud the defendants Daniel Dull and wife out of their interest in the property in controversy, and that their alleged inter-

37 ests in the property, as shown by the pleadings, against each other are wholly fictitious, and have no actual existence in

fact, but that they have between themselves parceled out and divided up the land in controversy, and are jointly interested in the result of this litigation, and have no adverse interests to each other, but have conspired, banded and confederated together as against this defendant, for the purpose of defrauding and depriving him of the property in controversy.

Wherefore he asks judgment as in his original cross-petition prayed.

FLICKINGER BROS.,
Attorneys for Daniel Dull and Wife.

And on the 24th day of June, 1893, the defendant George F. Wright files his

Answer to the Cross-petition of Daniel Dull and Wife

as follows:

Comes now the defendant, George F. Wright, and for separate answer to the cross-petition of Daniel Dull and wife, and amendments thereto, states:

1. That he denies each and every allegation therein contained, except such as are hereinafter admitted or in some other manner controverted.

2. Defendant admits the statements in paragraph 1 of said cross-petition.

3. As to the statements contained in paragraphs 1, 3, 4, 5
38 and 6 of said cross-petition, this defendant has neither information or knowledge sufficient to warrant him in either admitting or denying the same.

4. This defendant admits that said Blackman conveyed the property described to this defendant, and defendant also admits that he executed and delivered a mortgage on the same to A. W. Askwith for $5,000.

5. As to the allegations contained in paragraphs 8 and 9 of said cross-petition, this defendant has neither knowledge nor information sufficient to warrant him in either admitting or denying the same.

JOHN N. BALDWIN,
Attorney for George F. Wright.

(Verified.)

And on the 23d day of June, 1893, the intervenor, E. R. Phelan, files his

Amendment to His Petition of Intervention

as follows:

Comes now Edward R. Phelan, substituted plaintiff and intervenor in the case above entitled, and by leave of court first had and obtained, files this his amendment to his petition of intervention:

The intervenor further states that at the time of the purchase of the lands in controversy in this action of the plaintiff Blackman he also purchased of him his claim against the defendant Wright for

the rents and profits of said land while same was in the possession of said Wright, and he alleges that the rents and profits
39 thereof were of the value of three dollars per acre per annum, amounting in the aggregate to the sum of $4,800.00.

Wherefore he demands judgment against the said Wright for the sum of $4,800 as rents and profits of said land in addition to the relief asked in the prayer of his original petition.

E. E. DUFFIE AND
CHARLES GREEN,
Attorneys for Intervenor.

(Verified.)

And on the 24th day of June, 1893, the defendant George F. Wright files a

Separate Answer to the Petition of Intervention of Edward R. Phelan

as follows:

Comes now George F. Wright, one of the defendants in the above-entitled action, and for answer to the amendment to the petition of intervention of Edward R. Phelan, filed herein, states:

That he denies each and every allegation in said amendment to the petition of intervention of Edward R. Phelan contained.

JOHN N. BALDWIN,
Attorney for Defendant George F. Wright.

And on the 5th day of June, 1893, Intervenor Ed. Phelan files his

Answer to the Amendment to the Cross-petition of Daniel Dull and Wife

as follows:

40 Comes now Ed. Phelan, substituted as *pial*ntiff herein, and also intervenor, and for answer to the amendment to the cross-bill of Daniel Dull and Nellie Dull, filed herein, says:

That he admits that since the filing of the original answer and cross-petition by said defendants the action mentioned in paragraph 2nd of said original answer and cross-petition as pending in the supreme court of Westchester county, New York, has gone to decree, and final determination, but whether "Ex. A" attached to the amended answer and cross-bill is a true copy of the decree entered in said cause, this answering party has no knowledge or information sufficient to form a belief, and he therefore denies the same.

2nd. Further answering, he states that the said action in the supreme court of Westchester county, New York, was an action brought by the defendant Daniel Dull as plaintiff against John E. Blackman, Mary E. Blackman, George F. Wright, Asa W. Askwith, Edward Phelan and Edward R. Duffie, who were made defendants therein; the object of said action being to procure the judgment and decree of said court adjudging the deed made by the said Daniel Dull and Nellie Dull, his wife, to the said John E. Black-

man, conveying the lands in controversy in this action, and dated June 25th, 1889, to have been obtained by fraud, and false representations, and therefore void, and ordering the said Blackman to make a reconveyance of said land and to enjoin the said Blackman from executing any further conveyances of said land and from further prosecuting this suit to quiet his title thereto, and for general equitable relief.

3rd. He further states that for a long time prior to the commencement of said action, he and his codefendant Duffie, were
41 residents of Omaha, in the State of Nebraska, and that neither he nor the said Duffie were residents of the State of New York when the said action was commenced, nor at any time subsequent thereto, nor had they an place of residence in said State. That neither he nor the said Duffie had been in the State of New York for a long time prior to the commencement of said action up to the present time, and at no time since said action was commenced and long prior thereto, had they been within the jurisdiction of the said supreme court of Westchester county, New York. That neither the said Phelan nor the said Duffie appeared in said action, nor did they authorize any one to appear for them, and that no notice or process of any kind was served upon them of the pendency of said action, except a paper entitled a summons, signed by Martin J. Keogh as plaintiff's attorney, which said paper or summons was served upon the said Phelan and said Duffie by delivering to them a copy thereof, together with a copy of the petition in said action, in the city of Omaha, in the State of Nebraska, on or about the 24th day of December, 1892, for which reasons the said Phelan alleges that the said judgment and decree of said supreme court of Westchester county, New York, entered in said cause is as to the said Phelan and to the said Duffie wholly void, and of no force or effect, the court pronouncing the same having no jurisdiction of the subject-matter of the action, or of the persons of the said Phelan or the said Duffie.

Wherefore he prays judgment as in the petition and petition of intervention.

E. R. DUFFIE,
Plaintiff's Attorney.

(Verified.)

On the 5th day of June, 1893, E. R. Phelan, intervenor, files his

42 *Amendment to his Answer to the Cross-bill of Daniel Dull and Wife*

as follows:

Comes now Ed. Phelan, substituted plaintiff and intervenor herein, and by leave of the court first had and obtained, amends his answer to the cross-bill of Daniel Dull and wife by inserting therein between the eleventh and twelfth paragraph thereof the following, to wit:

11 A. Further answering said cross-bill the intervenor states, *that while he held the title of said land as security only for the amoun*t

due himself and said Duffie and Savage he executed a mortgage thereon to the said Duffie for the amount due and owing him from Blackman, viz: the sum of five thousand five hundred dollars ($5,500.00), and that thereafter and on and about the fifteenth day of September, 1892, and at or about the time this intervenor purchased said land from Blackman, said Blackman ratified and confirmed the act of this intervenor in executing and delivering said mortgage to said Duffie in consideration of a receipt in full, from said Duffie for attorney's fees due him from Blackman at that date, and the further consideration of Duffie releasing said Blackman from an agreement made between Duffie and Blackman, made in 1888, by which Duffie was to have an interest in whatever might be realized from the prosecution of the claim of the heirs of one John Hopper to certain property in the city of New York, and in the State of New Jersey, in and about the prosecution of which the said Duffie had expended a large amount of money and spent several months of time, which receipt and release the said Duffie then and there agreed to make to said Blackman, and did execute and deliver to him.

43 11 B. Further answering, the intervenor states that at and prior to the time of the conveyance of the land in controversy to him as security, the original plaintiff herein, John E. Blackman, was indebted to one E. P. Savage of South Omaha, Nebraska, in the sum of one thousand dollars ($1,000.00), more or less, for which said Savage held certain notes and obligations belonging to said Blackman, as collateral security. That thereafter, and at or about the date of the purchase of said land by the intervenor, in consideration of the agreement of this intervenor to pay to said Savage the amount so due him when the title to said land was settled and confirmed in this intervenor, and the further consideration that said Blackman should provide for the payment of the debt then due said Savage, which debt was wholly due at that time said Savage agreed to forbear the collection thereof until the determination of this suit, and to refrain from any steps toward applying the collateral securities by him held to the satisfaction of said indebtedness, and that in pursuance of his said agreement the said Savage has delayed and postponed the collection of his said debt from thence to the present time, and has refrained from any attempt to inforce the collection thereof out of the collateral security by him held to secure the same.

E. R. DUFFIE,
Attorney for Intervenor.

And on the 5th day of July, 1893, the intervenor, E. R. Phelan, files his

Amendment to His Answer to the Cross-bill of Daniel Dull and Wife

as follows:

For amendment to his answer to the amendment to the
44 answer and cross-bill of Daniel Dull and wife, this answering party says:

That in the month of February, 1892, and prior to any convey-

ance of the land in controversy by the said Daniel Dull to Nellie Dull, his wife, E. R. Duffie, one of the defendants in said cross-bill, met the said Daniel Dull and the said John E. Blackman in the city of Chicago, where the parties had met by mutual agreement to arrange and settle their differences concerning the controversy between them relating to the land in suit. That the said Duffie remained with the parties for two days or more and assisted in compromising and settling the difficulty between them. That before leaving the said city of Chicago for his home in Omaha, both the said Dull and the said Blackman informed the said Duffie that their differences had been arranged and settled by agreement made between them by which the said Dull abandoned any claim to the land in controversy herein, and was to advance to the said Blackman certain sums of money in consideration of which Blackman was to convey to the said Dull, a certain share or interest in the claim of the Hopper heirs to certain property in the city of New York, and in the State of New Jersey, the legal title to most of which property was held by the said Blackman, and that relying on said settlement and the statements of Dull and Blackman, relating thereto, said Duffie took his mortgage upon the land in controversy herein, and released to the said Blackman his claim and lien against the New York and New Jersey property aforesaid.

That upon his return home the said Duffie informed this answering defendant of the settlement between the parties, as above set forth, and that relying on the same, this defendant purchased
45 the land in controversy from the said Blackman, and assumed the payment of the said mortgage executed to the said Duffie, and also assumed the payment of the claim of one E. P. Savage of South Omaha, Nebraska, against the land.

Wherefore this defendant says that the said Dull is, and of right ought to be, estopped from claiming or having any interest in the land in controversy, as against the rights and interests of this defendant.

Defendant therefore prays judgment as in his original answer.

E. R. DUFFIE,
Attorney for Plaintiff.

(Verified by Duffie.)

And on the 8th day of July, 1893, the intervenor, E. R. Phelan, files his

Amendment to His Answer to the Cross-petition of Daniel Dull and Wife

as follows:

Comes now Ed. Phelan, and by way of amendment to his answer to the cross-petition of Daniel Dull and wife, states:

That Daniel Dull, in August, 1889, at the time of the execution and delivery of the deed of Blackman to Wright, had actual knowledge of the fact that the land in controversy herein was conveyed to George F. Wright for advances made and to be made, to the extent of $10,000, to one C. Haldane and said Blackman, to be used in

carrying on the enterprise known as "the New York enterprise," and that at said time said Daniel Dull and wife had conveyed to said Blackman the land in controversy, in consideration of
46 the said Blackman mortgaging to Daniel Dull certain property in New York city, of which the said Blackman at the time was the owner, for the sum of $10,000, and that at said time the agreed value of the property in New York city was the same as the value of the property in controversy herein, and that at the same time the said Blackman and wife made and executed a deed to said property in New York to Daniel Dull, to be held in escrow until the consummation of certain matters with reference to the title of the New York City property, and that said mortgage was given as additional security and as a guaranty of good faith upon the part of said Haldane and Blackman in the transaction with Dull. That said Daniel Dull had the privilege of filing said mortgage for record at any time, and that at that time and long prior to October 1, 1889, said Dull had knowledge of the fact that said Blackman was financially irresponsible and insolvent. That after having knowledge of all of the facts hereinbefore set forth, the said Daniel Dull negligently failed to file the said mortgage for record, and that afterwards the said Blackman quitclaimed the New York property covered by said mortgage, to one Lyon, the tenant of Daniel Dull, then occupying the said New York City property, together with other property, and the said Lyon placed his said deed of conveyance on record, and that said Lyon, at the time of the taking of the deed from said Blackman of the said property in New York city, had no knowledge or notice of the fact that Daniel Dull had a mortgage upon the same and identical property, and that had said Daniel Dull placed the said mortgage on record on the said New York City property, prior to the execution and delivery of the deed by Blackman to him (Lyon) of said land, the said Lyon would not have bought the said New York City property, and without record, the mortgage and
47 interest of the said Daniel Dull obtained through said mortgage would have been paramount and superior to the lien or interest of the said Lyon, and that by reason of all these facts the said Daniel Dull has waived any right to claim any interest or title in the property in controversy as against this intervenor, and by reason of his acts, as hereinbefore set forth, and by reason of his knowledge of the matters and things herein alleged at and prior to any damage suffered by him, he is now estopped and in equity and good conscience should be estopped from setting up any claim or interest in the property in question adverse to this —.

E. R. DUFFIE,
Attorney for Ed. Phelan.

(Verified by Duffie.)

And on the 8th day of July, 1893, the defendant, E. R. Duffie, files his

Amendment to His Answer to the Cross-petition of Daniel Dull and Wife

as follows:

Comes now E. R. Duffie, and by way of amendment to his answer to the cross-petition of Daniel Dull and wife, states:

That Daniel Dull, in August, 1889, at the time of the execution and delivery of the deed of Blackman to Wright, had actual knowledge of the fact that the land in controversy herein was conveyed to George F. Wright for advances made and to be made to the extent of $10,000, to one C. Haldane and said Blackman, to be used in carrying on the enterprise known as "the New York enterprise," and that at said time said Daniel Dull and wife had
48 conveyed to said Blackman the land in controversy, in consideration of the said Blackman mortgaging to Daniel Dull certain property in New York city, of which the said Blackman at the time was the owner, for the sum of $10.000, and that at said time the agreed value of the property in New York city was the same as the value of the property in controversy herein, and that at the same time the said Blackman and wife made and executed a deed to said property in New York city to Daniel Dull, to be held in escrow until the consummation of certain matters with reference to the title of the New York city property, and that said mortgage was given as additional security and as a guaranty of good faith upon the part of said Haldane and Blackman in the transaction with the said Dull. That said Daniel Dull had the privilege of filing said mortgage for record at any time, and that at that time and long prior to October 1, 1889, said Dull had knowledge of the fact that said Blackman was financially irresponsible and insolvent. That after having knowledge of all of the facts hereinbefore set forth, the said Daniel Dull negligently failed to file the said mortgage for record, and that afterwards the said Blackman quitclaimed the New York property covered by said mortgage to one Lyon, the tenant of Daniel Dull, then occupying the said New York City property, together with other property, and the said Lyon placed his said deed of conveyance on record; and that said Lyon, at the time of the taking of the deed from said Blackman of the said property in New York city, had no knowledge or notice of the fact that Daniel Dull had a mortgage upon the same and identical property, and that had said Daniel Dull placed the said mortgage on record on the said New York City property, prior to the execution and delivery of the deed by Blackman to him (Lyon) of said land, the said Lyon would not have bought the said New York
49 City property, and without record, the mortgage and interest of the said Daniel Dull, obtained through said mortgage would have been paramount and superior to the lien or interest of the said Lyon, and that by reason of all these facts, the said Daniel Dull has waived any right to claim any interest or title in the property in controversy as against this defendant in his cross-bill, and by reason of his acts as hereinbefore set forth, and by reason of his knowledge of the matters and things herein alleged,

at and prior to any damage suffered by him, he is now estopped, and in equity and good conscience should be estopped from setting up any claim or interest in the property in question adverse to this defendant.

E. R. DUFFIE, *Pro Se.*

STATE OF IOWA, } ss:
Pottawattamie County, }

I, E. R. Duffie, being first duly sworn, on oath say that I am one of the defendants in the above-entitled action; that I have read the foregoing amendment, and the statements therein contained are true, as I verily believe.

E. R. DUFFIE.

Subscribed in my presence and sworn to before me, this 8th day of July, 1893.

[SEAL.] A. W. ASKWITH,
Notary Public.

And on the issues so joined the following is all the evidence offered, and all the evidence introduced, and all the evidence offered to be introduced, on the trial of this action, together with the objections and exceptions of the parties thereto, and the rulings of the court thereon.

50 *Evidence of Ed. Phelan, Intervenor.*

1st. Deed of Daniel Dull and wife, dated June 28, 1889, conveying the land described in plaintiff's petition to John E. Blackman, and duly recorded on the 20th day of August, 1889.

2nd. Power of attorney Mary E. Blackman to E. R. Duffie to convey lands in Iowa, dated January 2, 1892, and recorded March 30, 1892.

3rd. Deed of John E. Blackman and wife, Mary E., to Edward Phelan, conveying the land in controversy, and dated January 30, 1892, Mary E. Blackman, signing by R. E. Duffie, attorney-in-fact.

4th. Mortgage of Ed. Phelan and wife to E. R. Duffie, on the land in controversy, dated August 27, 1892, and recorded August 30, 1892, and containing the following provisions:

"*Whereas said John E. Blackman is indebted to E. R. Duffie,* in the sum of $5,500, due September 1, 1892, with 8 per cent. interest from January 30, 1892, and conveyed the legal title to the above-described land to the said Edward Phelan, to secure said sum to the said Duffie, and also moneys advanced by said Phelan to said John E. Blackman.

Now, if the said John E. Blackman shall well and truly pay or cause to be paid the sum of money to the said Duffie, with interest at 8 per cent. from January 30, 1892, and shall duly keep and perform all the other covenants and agreements herein contained on his part to be kept, and performed, then these presents shall be null and void." (Here follows the usual clause that in case said sum of money is not paid by Blackman foreclosure shall be had.)

51 5th. Deed made by John E. Blackman and Mary, his wife, dated August 2, 1889, conveying the property in controversy to George F. Wright, and "warranting and defending the title to said premises against the lawful claims of all persons claiming by through or under us."

(To all of the foregoing instruments the defendants Dull and wife objected as incompetent, irrelevant, immaterial.)

JOHN E. BLACKMAN.

I did not deliver the deed above set out personally to Mr. Wright. I gave it to Mr. Haldane, with instructions for him to prepare memorandum, together with the deed, to Mr. Wright, or to deliver the deed when he received the memorandum back. The memorandum was to provide that I should deed Wright this land, and he was to advance money as needed, up to the amount of ten thousand dollars for "the New York enterprise." I never received any money from Mr. Wright, except $50 or $100 myself. I have demanded a reconveyance, and Wright claimed he held the land as security for $5,000 he had advanced Mr. Haldane, and he wanted the $5,000 and interest before he would deed it back to me. The deed from Blackman and wife to Phelan was executed by me in Omaha. I wanted some money, and went to Mr. Phelan to borrow and gave him the deed to this farm for that, and told him I was indebted to Mr. Savage and wanted to leave the title with him as security for that indebtedness, and also for what other money I might need. It was given as security for the money advanced by Phelan. In September, 1892, I was called to Omaha *by telegram from Judge Duffie*, stating that the Wright case was set for trial. *I then went to Phelan and for the first time ascertained that Phelan had given Duffie a mortgage for $5,500.*

52 *Duffie* came to me and requested me to ratify that mortgage, and upon his delivering to me a paper that recited a fact that he released any claim on the New York property, I ratified it. The contract was verbal, but was afterwards drafted into a written contract.

The contract that was finally agreed upon was signed in New York city; it was sent down by Duffie to me to be signed, and evidenced the contract made between Phelan and I at the time.

Something over $1,100, has been paid me on this contract. Phelan assumed the indebtedness for which the deed was originally given as security to Savage for $1,000 and interest; he also assumed the mortgage for 5,500, which had been given to Duffie.

Cross-examination on the part of Dull, defendant:

The original arrangement as to how this Wright deed was to be delivered was arranged between me and Mr. Wright, and there was nothing said at the time about his advancing money to Haldane. I had this arrangement with him in New York city. He only advanced me $100, and I gave him my due bill for it, which he still

holds. When I demanded Mr. Wright to reconvey this land he claimed he held it as security for the money advanced Mr. Haldane before the delivery of the deed. Here is a bill which Mr. Wright presented, and for which they claimed payment prior to the reconveyance of the property:—

"Bill showing payments to Chas. Haldane, through the Council Bluffs savings bank, aggregating $5,057.39, and beginning
53 March 30, 1889, up to August 27, 1889, and *all but $100 having been paid prior to August 17, 1889.*"

For the amount of this bill they claim to hold the land as security. I received the following letter from Mr. Haldane, which he told me he had received from Mr. Wright with instructions to show it to me. Letter, as follows:

"COUNCIL BLUFFS, IOWA, *Aug.* 19, 1889.

DEAR HALDANE: On my return from Chicago, I received the deed to the Dull land from the post-office, in registered letter—the deed from Dull and wife to Blackman and Blackman and wife to myself. I have not put them on record yet, but will today.

Yesterday I received yours of the 16th, and note what you say therein. We will try and take care of your check to Mr. Sanderson in payment of your Hawkeye insurance, although we have not as yet made any definite arrangements for money to cover future expenses in the New York enterprise. Coming home from Chicago, John and I discussed the matter of getting at the owners of the property on Broadway, and we both agreed that if negotiations for settlement with those parties was to be the method of procedure, that it would not be the wisest thing to do to notify all said occupants at once of our claim, and of what we expected, etc., and it *does seem to me that this interview you have reported in your last letter, wherein the meeting to try and negotiate a settlement with Mr. Lyon* developed, as it did, that you were dealing with the attorney of Mr. Vanderbilt, another of the occupants, and who was then and
54 there advised of your claim to the Vanderbilt property, ought to convince you that the idea of serving a formal notice on these occupants is not the best way to bring it to their attention, provided, as I have before said, that negotiations for a settlement is to be the method of procedure at first. In other words, it seems to us that you ought to pick these occupants up one by one as opportunities present, and deal with them that way, one by one. It is said that the best way to fight a battle is to take the forces in detail; your plan would imply that you would have them all mass their forces against us and then that you are ready for them, and all they had to do was to come on.

Now, nobody ever made any settlement with litigants in that way, and hence we decided to send you the telegram we did, thinking that if you did not see proper to adopt our suggestions, a few days' delay would not probably militate very much against our interests.

Now it seems to me, and to both of us, that you will accomplish very much more in the way of settlement, if you pursue this plan than you would to carry out the one you suggested. You under-

stand that that would be our way of procedure in regard to that particular phase of the case.

We feel very much encouraged at the result of *your interview in the Lyon matter, and it certainly looks, from Lyon's attorney taking that view of the question, and his advising Lyon accordingly,* that he could not do otherwise than advise his client Mr. Vanderbilt, in the same way which would be of course tantamount to a settlement of both cases.

You seem to have a wrong idea entirely in relation to John's idea about the settlement, or negotiations for a settlement of these
55 cases. Of course, while he and I are furnishing the sinews of wars, you must expect we should have some anxiety in regard to the speedy adjustment of some of the cases at least, so as to make this thing self-supporting, and this brings us directly to the manner or policy of bringing about these settlements.

Now, his idea, and it is mine as well, is, that if you are going to settle anything by compromise, why the better acquainted you are with the parties with whom you have to deal, and the better you stand with them in every respect, and the more intimate relations you can get up with them in every way, that as a general rule, it follows that you can make a correspondingly better adjustment or settlement with them. And while that may not be your way, it would certainly be mine. That is, if I wanted to settle with a man who was a stranger to me, I should feel that the better acquainted I could get with him and his friends, and the nearer I could get up to all of them, the chances would be I would have the better success in making my settlement. You say that money cannot be charmed out of those people—out of their pockets—any more than it can be out of mine. They may not be as ugly as I am, but you know, Haldane, that a man can get a great deal more money out of my pocket by being nice, and kind, and good, and gentlemanly to me, than he could by just coming forward and making a demand to pay over what little I have got because he claimed a better title to it. I think that illustrates the position exactly.

In regard to John going down there to assist you and Mr. Blackman in the matter of these negotiations, while I am still of the opinion, the same as Judge Hubbard expressed to you at Chicago,
that he can be and would be of very great assistance in
56 bringing about this settlement, if he was there; at the same time, if you are opposed to his going, it would not be very pleasant, of course, for him to go there and proffer his assistance under any such state of feeling. But, if it is thought by us that such would be the most politic course to pursue, why then I think you ought to raise no objections whatever to his going. As to his going down there at present, I don't see how he can do so, and I don't understand he expects to unless some exigency should arise whereby it would be imperatively necessary for him to do so. Matters here are in such shape as to require some one to look after them who is familiar with them, as you and he would be, having had the business under your charge from its inception.

Now, in justice to myself, whom you, as well as Mr. Baldwin and

Judge Hubbard, have admitted as the more responsible party in the matter of raising funds to carry on this war—in the matter of guaranty of the contract which you have given to the heirs—I think, and I have no hesitancy in saying to you, and Mr. Blackman also, that he should make me a right-out, absolute deed to all the property, deeding to me his entire interest, together with that of the heirs, and that should be sent to me to hold in trust. For what? For my protection, your protection, Mr. Baldwin's protection, Mr. Blackman's protection, and the protection of the heirs, as well as the protection of all of us against the heirs, when we come to make a final settlement with them in regard to the proceeds which we may derive from this property. Now, it is no argument to say that the deed lying in my safe would be a great inconvenience to you people there, in making these settlements. I do not wish to waste any words about that, because there is nothing to it, nor is there anything in your argument about the validity of the deed.

57 You thought best, as a matter of protection to yourself, and I suppose to us, to have a deed so given me which you hold in your hands. If that deed is good, the deed to me would be good.

You say you have a deed already, in your safe. Now, if it would not be just as convenient to have it in my safe, why I cannot see the reason why, and I think that, while you have assumed no responsibility in this matter, except simply the matter of attending to the business, and Mr. Blackman has assumed none whatever in any respect (for I notice that when he deeds me the Dull land he simply gives me a quitclaim). I think, I say, that under that state of affairs it would look very much better to fair-minded people that you and Mr. Blackman should divest yourselves of what title you have in that property and put it in the name of the man who was standing at your back and furnishing the sinews of war for this enterprise.

Now, I come to the question of readjustment; it is so superbly ridiculous to me, Haldane, to think that a man like Mr. Blackman, because he happens to discover this old woman, who told him about this matter, and then brought it to you as an attorney, because he had not the means and ability to carry on the matter himself as it should be—that he, in that situation, should receive as much out of this enterprise as the firm of 'Wright, Baldwin & Haldane,' who furnish not only the '*sinews of war*,' but as much labor and all of the more important brain-work that is expected to be used in carrying it out to a successful issue; and, hence, I think and ask, and, I might say, as well, demand that a readjustment be at once made with Mr. Blackman, by which he shall receive one-third and we two-thirds of the one-half that we do not have to account for to the heirs.

58 My understanding was that your contract with Blackman was to the effect that he was to pay all expenses that might be incurred in working this case up to a successful issue, but instead of that we have furnished all the means thus far. You have been there eight months; have furnished quite as much labor as he has

in that time, and have paid not only your own expenses, but his also, and in addition have furnished all the brain-work and taken all the chances of ultimate success in the enterprise, placing your firm in the light of absolute guarantor of everything that he may do or has done in connection with this matter.

This new contract of adjustment, when made, should be made with Mr. Blackman and the firm of Wright, Baldwin & Haldane.

I also would like to have you send me a copy of the contract of guaranty which you have executed to the heirs for this property.

Of course, it is expected you will show this letter to Mr. Blackman, if you desire it. Please let me have a reply as early as possible.

Yours truly, GEORGE F. WRIGHT."

At the time I made the conveyance to Phelan, January 30, 1892, it was originally given as security for moneys advanced at that time, $75.

The consideration of $15,000, expressed in the deed, was not received, *$75 was the only cash consideration. I didn't know when the mortgage was given by Phelan.* There was also an understand-
59 ing between Duffie and I, that out of the proceeds of the land he was to receive the amount he had agreed upon for his work down there in the New York enterprise. It was with this end in view that Mr. Phelan should hold it. And when it was final, *I wanted to leave the title here; I had other reasons for it. Phelan didn't know anything about this arrangement, but made the mortgage without my knowledge and consent.* At the time I made the deed I didn't tell Phelan how much I owed Duffie or Savage. I simply told him I owed Savage. I had given no note or evidence of indebtedness at that time to Duffie, nor did I ever at any time execute any. I owed him (Duffie) an attorney fee for a number of years—1888 and 1889. When I executed the deed to Phelan, January 30, 1892, I never got any money from him; *all the money I received was through Judge Duffie.*

I think I had $50 when I left, in September. After returning to New York, to my recollection I got $75 more. This was before January, *after I had the meeting in Chicago with Mr. Dull.* Afterwards, I think I got $350, I believe, from Duffie. It was either sent me or telegraphed me, or by check, I can't remember. I think I next got $150, perhaps, November, 1892, and $375 the following January, is my recollection; and afterwards, in May following, $50, which was the last payment. *It was all received through Duffie. All the business was done through him, and I would write to Duffie, and he would send it to me. Duffie was acting as attorney for Phelan in the matter, as I understood.* Whenever I wanted any money I wrote to Duffie and he would send it to me. *I don't know where he got it.*

I owed Colonel Savage about $1,000, which was evidenced by notes and sight drafts, I think, in 1887 or 1888. I don't know whether I ever gave a note for the amount, or not. Phelan
60 was to pay this, in the written contract. *Don't know whether he has ever paid anything to Savage or Duffie, or not. I had*

never given Duffie a note or due bill, or anything of the kind. The arrangement first was, it was to be paid out of money that came from New York, and I hadn't got any that I could spare. All the agreements and understandings between us were reduced to writing about October 3, 1892. At the time of the contract I talked over with Phelan about the condition of the title. I think I showed him my deed from Dull, and told him Mr. Wright had a claim, and that there was a mortgage of $10,000 placed on it by my grantor. And he knew that Wright was in possession of the land under his deed. And he knew he would have to have a lawsuit with Wright to get possession, or pay him his money.

Additional cross-examination by defendant Wright:

This statement of account, referred to, was presented to me as a basis of settlement; I supposed it contained what was due Wright. It was before the action was brought against Mr. Dull.

Redirect:

I could not figure up now, the indebtedness due Savage.

Additional cross-examination on the part of Dull:

At the time of making the contract with Phelan, my suit against Wright had been pending ever since February 28, 1892. I don't know whether Mr. Wright had filed his cross-petition in it, or not.

61 Col. F. P. SAVAGE.

I had a talk with defendant Wright, in Council Bluffs, in regard to his holding this land for security. Wright refused to give any money to Blackman until he could get the money that Haldane owed him.

Mr. Blackman wanted his deed back, and Wright refused to give it to him. He said Mr. Baldwin knew the exact amount, but he couldn't tell exactly—about $5,000.

Cross-examination:

He said he proposed to hold the land until he got the money—the money that Mr. Haldane owed him, or the firm of Wright, Baldwin & Haldane, prior to the time he obtained his deed.

EDWARD PHELAN, intervenor.

Live in Omaha; had a conversation with Wright in September, 1892. He claimed to be holding it for $5,000 or $6,000, money advanced Haldane on the New York enterprise. I was negotiating for the purchase of the land at that time.

Cross-examination by defendant DULL:

The conversation was in Wright's office, in September, 1892. He offered to reconvey on the payment of this money. The conversation was principally between Mr. Duffie, Blackman and Wright. I was there to get him to reconvey to fix up my title.

Redirect:

I never learned that Mr. Dull claimed any interest in the
62 land until I was served with that notice last fall of a suit from New York.

Cross-examination by WRIGHT:

The notice was served on me in Omaha. I didn't appear in the case.

Cross-examination by DULL:

Q. *Did you ever make any inquiry about Mr. Blackman's title?*

A. *No; Mr. Duffie wasn't there. I didn't inquire about the title at all.*

Q. *You made no inquiry?*

A. *No.*

Q. *At the time you got the title, in January, from Blackman, didn't he explain the title to you?*

A. *I don't know as there was any explanation made.*

Q. *Didn't you know at that time that Blackman didn't have any title?*

A. *Well, I don't know.*

Q. *Didn't you know he had deeded the land to Wright and didn't have any title at all?*

A. *Yes, sir; I did. I knew he had commenced suit to get his title back from Wright, and I understood he gave Dull some property for it in New York city. I understood Dull had made a trade for some property in New York city.*

Q. Did he say that Dull had sued him in New York city?

A. He did not.

63 Q. Didn't he say there was an action pending in the supreme court of New York?

A. He did not.

Q. *You didn't make any inquiry?*

A. *No.*

Q. Do you pretend to say that all that Blackman said was that this was property he had traded for in New York with Mr. Dull?

A. *I relied a great deal on what Mr. Duffie told me in the whole matter. He was my counsel in the matter, and I relied on his statements as to the title. I never saw the land, never was on it. I expected the title was all right. I relied on Duffie.* I expected to have to pay $15,000 for it. Mr. Wright's claim, Mr. Duffie's, and Mr. Savage's, and the $10,000 mortgage that covered the whole track, there might be some doubt about that.

Q. Did you get an abstract of title?

A. *I am not posted on abstracts. I relied on Mr. Duffie. He was my agent in negotiating the sale. He drew this contract for me, October 3, 1892, and drew the deed for me and executed it as an attorney-in-fact for Mary E. Blackman, and I relied on his judgment, and he advised me to buy the property, that the title was all right, and I took his advice and bought it. I never asked Duffie whether Blackman and Dull were having a lawsuit about the land or not. I didn't have any occasion to. I knew*

there was a lawsuit pending, but I had the privilege of settling it if I wanted to. But I at once intervened and filed my petition of intervention. I knew at the time of getting the conveyance that the title of the land was in Wright. I knew that Blackman would have to set aside the deed to Wright before I would have any title.

64 I was not posted on matters of that kind, *but relied on Mr. Duffie, I presume.* I first paid Mr. Blackman $75, when the deed was executed. I bought the land on Duffie's representations, and relied upon it, and *never inquired what was going on in the courts of New York between Blackman and Dull. I don't know that I had any reason to. I was served with notice of the suit in New York the 24th day of December, 1892. I filed my petition of intervention September 17, 1892, before this contract was executed. Duffie was acting as my attorney in the matter, and also, I suppose, for Mr. Blackman.* As soon as I got the deed from Blackman I went and made a mortgage to Duffie for $5,500. Duffie showed me a letter from Blackman, and executed it on that authority. Duffie told me the amount. I never heard Blackman make any opposition to it. *Judge Duffie is a friend of mine. He has been transacting my business in Omaha in a legal way. After I paid Blackman the $75, in January, 1892, I can't give the date when I next paid him anything. I can't give the dates of any payments I made. Some money was paid after September 17th. The transactions were entirely or almost entirely between Judge Duffie and Mr. Blackman, and he acted as my agent in remitting to Blackman and also Mr. Blackman's agent, I suppose, expenses to New York city. The $75 paid was for Blackman's expenses to New York city. I am not in the habit of taking mortgages on 600 acres of land for $75 to pay a man's expenses from here to New York city.* I was acquainted with Blackman; he had been down there several time-, and through Duffie and the friendship that existed between Duffie and Blackman—but for that I don't know as I would give him $75.

Q. *Duffie was the reliable man you depended on in the transaction?*

A. *Well—his advice.*

Redirect:

65 Blackman proposed giving me this deed for the $75. I did not ask it of him. I understood that Mr. Duffie had gone out and examined the land, and I had a conversation with him about it. He told me the land was worth from $25 to $35 an acre. The money I paid to Blackman was *in checks, payable to the order of E. R. Duffie.*

(Witness identifies checks "J" to "O," inclusive.)

Cross-examination by defendant DULL:

(Witness identifies checks on Omaha National bank, payable to the order of E. R. Duffie, endorsed by him and signed by Ed. Phelan, being Exhibits "J" to "O," as follows:

January 30, 1892—$75.

August 30, 1892—$125.

November 29, 1892—$150.

October 3, 1892—$100.
October 12, 1892—$400.
March 23, 1893—$100.
April 1, 1893—$50.
January 6, 1893—$375.)

Q. How do you know that Mr. Blackman got the proceeds of these checks?

A. *I couldn't say that he got the proceeds of any of them. All I know is, I gave the checks to Duffie to go to him.* I can't swear who got the money, outside of Judge Duffie. The only one I personally know that Mr. Blackman received was the first one for $75. I gave that to him personally. *I paid the others on Mr. Duffie's demand. I went on paying the money after I was served with notice. The check for $375*
was given after I was served. I never examined the records in
66 *this case to see if Dull had filed a cross-petition. I went on paying the money, all the same; it didn't make any difference. I was paying the money right along, whether Dull claimed the land or not. I was told by Judge Duffie that that notice in the New York case didn't cut any figure, and that I should go on paying just the same; that Blackman needed the money. The dates of the checks show the dates I paid the money; they have the proper dates.*

Q. So, it didn't make any difference if the land had dropped down or become submerged in the ocean; I suppose you would have paid on Mr. Duffie's request?

A. *Oh, I don't know about that.*

I have never paid Duffie anything on his $5,500 mortgage, nor Savage anything on his obligations, and all that I ever invested in these 550 acres are these checks in evidence, that I gave to Duffie for that purpose, excepting the $75 check I gave to Blackman. I wouldn't swear but part of this money was money advanced to Duffie on account of his services. He might have taken part of this money and used it and replaced it in some way or other to Blackman; I couldn't say for that. I never paid Duffie for services in any other way. There might be some other checks I have paid Duffie on attorney fees, when it was I can't tell. I will not swear that any of these checks were given on attorney fees.

Redirect:

I estimated it would take about $15,000 to get a clear title to the land. *Didn't know but what it might cost that much before we got through with it.*

Recross-examination:

I relied on Judge Duffie's statement as to the value of the land.

Q. I believe you stated you were a contractor in Omaha?
67 A. Yes.
Q. You are not in the real-estate business?
A. I am.
Q. That is, you have a real-estate office?
A. *Well, I take a hand at most anything.*
Q. *Sort of an all-round speculator?*
A. *Yes, sir.*

E. R. DUFFIE narrates as follows:

Lawyer, Omaha. Wright told me he held the legal title, and would hold it until he was paid the money he had sent to New York to be expended in the scheme there. He stated that Haldane and Blackman were interested in the "New York deal," and that Haldane and Blackman were interested together, and that this land was part of the proceeds of it, and ought to be held for the payment of the money that he had advanced to help prosecute it. He had paid taxes on the land $201.80, and $354 expenses, and collected $2,062 rent.

Cross-examination on behalf of defendant Dull:

This was after the conveyance had been made to Phelan, in January, 1892, after I had left for New York. The way I happened to be there, *Mr. Blackman was very anxious to sell the land, and I was very anxious that the title should be settled up so that I might get something out of my claim; and I knew that Phelan was quite a speculator, and I got him and Blackman together, and we all went down there to see what Wright would settle for.* He gave us these figures,
68 and Phelan agreed to pay the amount the next morning. Afterwards he called me to one side and said that *a friend of his had advised him that until the Holcomb mortgage and some other New York claim that was apparently a lien upon the land was removed in some way, not to pay out so much—so large an amount as that.* Phelan didn't have any interest at that time—in September. He had already filed a petition of intervention, but it was before the execution of the contract.

Intervenor Offers in Evidence Contract Between Blackman and Ed. Phelan.

This agreement, made this 15th day of September, 1892, by and between John E. Blackman, of the city of New York, party of the first part, and Edward Phelan, of the city of Omaha, Nebraska, party of the second part, witnesseth:

Whereas, the said John E. Blackman and Mary E. Blackman, his wife, did on the 30th day of January, 1892, convey to the said Edward Phelan by deed of general warranty, the following-described lands, to wit:

(Here follows a description of the land in controversy.)

And whereas, the said deed of conveyance was executed and delivered to said Phelan as security merely to assure to the said Phelan the repayment of certain money due and owing to said Phelan and others from the said Blackman;

Now, therefore, it is agreed that said deed of conveyance shall become absolute in fact and stand as a full and complete conveyance of the title to the land described therein, to the said Phelan,
69 and that the said Blackman shall as soon as can be done procure from his wife, Mary E. Blackman, an agreement on

her part that said deed shall operate as a full and complete transfer of all her rights in said land to Phelan.

In consideration, whereof, the said Phelan agrees on his part to pay George F. Wright, of Council Bluffs, Iowa, the sum of $5,000, claimed to be procured by said Wright for Charles Haldane, of the city of New York, at 8 per cent. interest thereon from the 3rd day of August, 1889, and for which sum said Wright claims to hold said land as security, but from said sum of five thousand dollars and interest is to be deducted the excess of the rents and profits received from said lands while in the possession of said Wright, over and above the taxes and other proper charges by him expended thereon, and said money is in no event to be paid said Wright until all liens of all kinds placed on said land by said Wright while the title stood in his name are released, and a deed to said land made by him and delivered to said Phelan, or a valid decree of court entered and confirming the title to said land in Blackman or Phelan, and a valid account, or one guaranteed to be valid by said Wright against the said Charles Haldane, assigned either to Phelan or to Blackman, and said Phelan may, if he chooses, contest and litigate the claim of said Wright to hold said land for security for the amount claimed by him to have been advanced to said Haldane, and to defeat said claim if he can do so, and recover said lands from Wright, divested of any claim by him made to hold the same as security for any sum or sums he may have advanced to said Haldane or others.

Said Phelan further agrees to pay the said Blackman the sum of $500 in cash, and a further sum not more than $500, in such amounts from time to time, as the needs of said Blackman may require.

70 Said Phelan further agrees to pay to E. R. Duffie, of Omaha, Nebraska, attorney's fees for services rendered, and to be rendered in and about said land, the sum of one thousand dollars, and which is not to be charged to said Blackman, and a further sum of one thousand dollars, more or less, to E. P. Savage, of South Omaha, Nebraska, the exact amount to be determined upon a settlement to be hereafter made between the said Savage and Blackman, and payment thereof to be made by Phelan when the land is appraised after title is established.

Said Phelan further agrees to prosecute such suit or suits as may be necessary to require any mortgagee of Daniel Dull, who conveyed said land to said Blackman, to satisfy their liens out of the property covered by their mortgages and still owned by said Dull, if the same can be done.

After the title to the land is fully established in said Phelan, he taking proper steps to attain that end, he agrees to have said land appraised by disinterested parties, and pay to said Blackman a sum which, together with that already paid to said Blackman and Savage, shall amount to one-half the net sum of the appraisal of said land, after deducting from the same the amount paid Wright and others to release lien.

In no event shall said Blackman be charged with or become liable

for any moneys paid out or expended by said Phelan for attorney's fees.

(Signed) ED. PHELAN.
JOHN E. BLACKMAN.
MARY E. BLACKMAN.

Acknowledged in Douglas county, Nebraska, by Ed. Phelan, before E. R. Duffie, notary public, October 3rd, 1892.

71 Acknowledged in the city of New York, by John E. Blackman and Mary E. Blackman, October 6th, 1892.

Intervenor rests.

Evidence of Defendant Wright.

JOHN N. BALDWIN.

Had a conversation with Mr. Haldane in reference to some money matters, *in the spring of 1889*, in New York. Mr. Haldane had told me about Blackman having a claim to certain property in New Jersey and New York city; that he had been working for two or three years getting deeds and records, and wanted Mr. Haldane to be his attorney.

(The defendant Daniel Dull objects to all conversations had between the witness and Haldane as incompetent, not the best evidence.)

He said Blackman didn't want any arrangement made with Wright, Baldwin & Haldane, which was the name of our firm. He showed me a written contract with Blackman, and we made an arrangement with our firm, the same as any ordinary business, and *it was to be for the firm's benefit.* Haldane thought it was a good scheme, and the property was valuable. He was to get one-half, and it would pay us to let him go down to New York and be on the ground and assist in the work. Haldane went to New York in November, 1888, with Blackman. I had been getting money and sending it to Haldane to prosecute the legal work of the case. Haldane said he had found out a man named Dull, who was on part of this land on Broadway—on this strip, and that negotiations were pending for a trade between Dull and Blackman, and he wanted

72 to know if he got this Pottawattamie County land from Dull in the trade if Wright would advance him any more money to carry on the enterprise. And he agreed if Mr. Wright would advance him $5,000, more money, that he would deed the land to Wright and he could hold it as security for the $5,000 advanced, and further advances. I came back to Council Bluffs and made arrangements with Mr. Wright to do so. The deed was executed by Blackman and forwarded to Mr. Wright under this arrangement. The bill offered in evidence was made for the purpose of a settlement with Phelan.

Cross-examination:

During all the time of these transactions Haldane was a member of the firm of Wright, Baldwin & Haldane, and was entitled to par-

ticipate in the profits of the business. The transaction belonged to the firm, the same as any other case, only the contract was made with Blackman by Haldane. Wright, Baldwin & Haldane had a contingent fee in the result of the litigation down there in New York city, and a certain percentage of what might be eventually obtained. The firm of Wright, Baldwin & Haldane was transacting its business, as usual, and Haldane was participating in the proceeds of the business at Council Bluffs. There has never been any accounting or settlement had between Haldane and the firm. At the time of these transactions Haldane was still a member of the firm. Our firm was to get 50 per cent. of the proceeds realized by Blackman out of the Hopper litigation. I was in New York *in August, 1889*, and insisted on Blackman making the contract directly with the firm, but Blackman wouldn't do it, said he had enough.

I don't know what Haldane did with the money we sent him. I don't know whether Haldane ever got any profits out of the Hopper deal for the firm; *he never reported any to us.*

73 GEORGE F. WRIGHT.

Member of the firm of Wright, Baldwin & Haldane. I borrowed $5,000, to send to Haldane, to further the Hopper scheme. Went to New York *July 11th, 1889*, and had a talk with Haldane, and complained about the Blackman deed not being delivered. He said it would be sent soon after my return home. I was not to advance $10,000 for the deed. After I got out my $5,000 I was to turn the balance over to Mr. Baldwin for the benefit of the New York enterprise. I took possession of the land in the fall of 1889, and have had possession ever since. I paid the taxes of 1889. Mr. Dull was here about a year ago, and made his first complaint to me. He claimed that the property that he had got from Mr. Blackman, on Broadway, New York, had subsequently been sold by Blackman to Mr. Lyon and deeded to Lyon, and he was shut out of it. I was served with notice of the suit in New York, last December (1892). I never appeared in the case.

Cross-examination:

Haldane was a member of our firm, and went to New York to represent the Hopper heirs' interest, in which our firm had a contingent fee. There never has been any settlement had with the firm and Haldane. What I know about the arrangement with Haldane is what Mr. Baldwin told me, *in March, 1889.* The letter which has been offered in evidence is my letter to Haldane, on receipt of the deed. The John referred to in my letter is Mr. Baldwin, of our firm. He was in harmony with the expressions of this letter.

Q. Didn't you consider it a fraud that Mr. Dull got nothing for his land?

A. *Well, I didn't consider it right, between the two men.*

74 Dull said he didn't get the land he was to get from Blackman for his Iowa land; that he hadn't got one dollar for the

land he had conveyed to Blackman. That Haldane had gone in and settled with Lyon and conveyed the land to him. *He claimed the consideration had failed, and he had lost his land in that way.* The Lyon mentioned in this letter is the same Lyon that got the property in place of Dull. Dull claimed *they had sold the property out from under him; that he had not got the land they contracted to give him for this Iowa land.* Dull came to try and make a settlement with me, and *I told him I must have Baldwin's consent.* After I got a deed to the land from Blackman, I mortgaged the property to Askwith for $5,000. He was a clerk in the office. This was an accommodation note he gave me. He had no money in it at all, but *it enabled me to use it to raise money.* He endorsed it in blank, and I got $5,000 on it from Mr. Millard, and turned the note over as collateral security. I owed him $6,000 at the time. I have never paid the note, and it is long past due.

Defendant George F. Wright rests.

Stipulation.

It is agreed that the summons, together with a copy of plaintiff's bill of complaint and order for injunction set out below, were served upon the defendants therein named, George F. Wright, A. W. Askwith, Ed. Phelan and E. R. Duffie on the 24th day of December, 1892, in the city of Omaha and Council Bluffs, and that no appearance was made by them in said action.

Summons, complaint, and order of injunction served upon the defendants as above stipulated, as follows:

75 Supreme Court, Westchester County.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants. } Summons.

To the above-named defendants and each of them:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, Nov. 3rd, 1892.

MARTIN J. KEOGH,
Plaintiff's Attorney.

Office and post-office address, No. 5 Beekman street, Temple court, New York city.

To the above-named defendants, George F. Wright, Asa W. Askwith (Asa fictitious, Christian name unknown), Edward Phelan, and Edward R. Duffie:

The foregoing summons is served upon you, without the State of New York, pursuant to an order of Hon. Jackson O. Dykman, a justice of the supreme court of the State of New York, dated the 17th day of December, 1892, and filed with the complaint in
76 the office of the clerk of the county of Westchester, in the State of New York, at White Plains, in said county.

MARTIN J. KEOGH,
Plaintiff's Attorney.

Temple court, New York city.

Supreme Court, Westchester County.

DANIEL DULL
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. WRIGHT, Asa W. Askwith (Asa Being Fictitious, Chrissian Name Unknown), Edward Phelan, Edward R. Duffie.

Plaintiff complains and alleges:

First. That plaintiff is a resident of the county of Westchester, in the State of New York.

Second. That the defendants John E. Blackman and Mary E. Blackman are also residents of the State of New York.

Third. That the defendants George F. Wright and Asa W. Askwith are residents of the State of Iowa, and the defendants Edward Phelan and Edward R. Duffie are residents of the State of Nebraska.

Fourth. That on the 25th day of June, 1889, plaintiff was the owner in fee-simple of certain lands in Pottawattamie county, Iowa, described as follows, namely: The south half (S. ½) of section numbered four (4), the northeast quarter (N. E. ¼) of section numbered nine (9), the northeast quarter of the southeast quarter (N. E.
77 ¼, S. E. ¼) of section numbered nine (9) and thirty-one $\frac{6}{100}$ acres out of the southeast quarter of the southeast quarter (S. E. ¼, S. E. ¼) of section numbered nine (9), (being the same part of said last-mentioned forty-acre tract heretofore conveyed to Daniel Dull by George F. Wright), all in township seventy-six (76) north of range forty-two (42) west of the 5th P. M., in all $551\frac{6}{100}$ acres.

Fifth. That a short time previous to said 25th day of June, 1889, the defendant, John E. Blackman, intending to cheat and defraud this plaintiff, approached plaintiff and represented to plaintiff that a certain parcel of land in the southeast corner of Broadway and Fifty-first street, in the city of New York, which plaintiff had leased from one A. M. Lyon for a term of years, and upon which plaintiff had erected a substantial building and which plaintiff then occupied, did not belong to said Lyon, but belonged to said Blackman, and that he was about to begin a suit against said Lyon and this plaintiff to eject plaintiff therefrom.

Said Blackman at the same time represented that the title to the

land had, until recently, been vested in the heirs of one John Hopper, some two hundred in number, that he had obtained and held conveyances from said heirs, representing about eighty-five per cent. of the title, and that he had made arrangements by which he should shortly obtain conveyances from the other of said heirs.

Sixth. This plaintiff relying on the truth of said statements and representations so made by defendant Blackman, and believing said statements and representations to be true, entered into a contract whereby plaintiff agreed to convey to said Blackman *to* the Iowa lands hereinbefore described, and said Blackman agreed to
78 promptly prosecute his suit to recover said land at Broadway and Fifty-first street, New York city, at his own expense, and to a final determination, and in the event that he succeeded he would give to plaintiff a conveyance thereof, and put plaintiff in possession thereunder. And before entering into said contract said Blackman expressly represented that he was the possessor of ample funds and property wherewith to prosecute said action.

Whereupon, relying upon each of said representations and being solely moved and induced thereby, plaintiff, on the 25th day of June, 1889, made, executed and delivered to said Blackman, a good and sufficient deed, with full covenants of warranty, conveying to him the lands in Iowa hereinbefore described, and said Blackman, on the 20th day of August, 1889, caused the same to be recorded in the office of the recorder of deeds of Pottawattamie county in Book 208, at page 311.

Seventh. Plaintiff further alleges that each and all of the representations so made by said Blackman as aforesaid, were false and untrue, and were known so to be by said defendant Blackman at the time of making the same. That in truth and in fact said Blackman had not at that time about eighty-five per cent. of the title of said Hopper heirs, nor as plaintiff is informed and believes, more than fifty-five per cent. thereof, and he had not, in fact, any prospect or belief that he would ever acquire the whole, or nearly the whole of said title, and in truth and in fact of the portion of said title which he had acquired more than *than* twenty-five per cent. had been conveyed, or pledged, by him to other persons, so that he could not control or regain it; and that in truth and in fact said Blackman had not at the time of making said representations any funds or property wherewith to employ counsel or prosecute his claim to the property in plaintiff's possession, and has never since
79 that time been possessed of any such funds or property, and that said statements and representations were made by said defendant Blackman for the purpose of deceiving, cheating and defrauding this plaintiff.

Eighth. Plaintiff further states, upon information and belief, that the defendant John E. Blackman has lately commenced an action in the district court of Pottawattamie county, Iowa, against plaintiff and Nellie M. Dull, plaintiff's wife, claiming in substance that he is the absolute owner of said Iowa lands, and asking that plaintiff and said Nellie M. Dull be declared to have no claim thereto, and no interest therein. That said Blackman has frequently, since

the 25th day of June, 1889, promised to reconvey said Iowa lands to plaintiff, but has neglected, and now refuses so to do, and instead thereof has commenced said action for the purpose of putting plaintiff to great expense and trouble, and thereby compelling plaintiff to submit to paying said Blackman a sum of money for said reconveyance.

Ninth. Plaintiff further states upon information and belief that on the second day of August, 1889, defendant Blackman executed a quitclaim deed of said lands to the defendant George F. Wright, which was done without any consideration, in money or otherwise, and said Wright, on the 16th day of November, 1891, without any right or authority from this plaintiff, executed a mortgage on said lands to one A. W. Askwith, purporting to secure the payment of the sum of five thousand dollars, which said mortgage plaintiff alleges upon information and belief, was executed and delivered without any consideration; that on the 30th day of January, 1893, said Blackman again conveyed said lands to the defendant Edward Phelan, but such conveyance, as plaintiff is informed and
80 believes, was made to secure the sum of seventy-five dollars only, loaned by said Phelan to said Blackman, with full knowledge of plaintiff's claim to said land; and that on the 27th day of August, 1892, said Phelan executed and delivered to the defendant Edward R. Duffie, a mortgage upon said lands, to secure to said Duffie, who is an attorney-at-law, certain fees which defendant Blackman had agreed to pay to said Duffie for defending said Blackman against plaintiff's claim to said land, said Duffie at the time making said contract, well knowing that Blackman had obtained the deed from plaintiff by fraud.

Tenth. Plaintiff further states that said Iowa lands are worth the sum of fifteen thousand dollars, or more, that defendant Blackman has obtained possession of them, and has either personally, or through defendant Wright, collected the rents thereof, aggregating, as plaintiff is informed and believes, three thousand dollars, and that defendant Blackman is not only insolvent, but has no visible or available property, real or personal. Upon information and belief, plaintiff states that each of the defendants, grantees and mortgagees of said Iowa property, well knew that the title to said property had been obtained from plaintiff by fraud and deceit by defendant Blackman, prior to acquiring any alleged interest therein or claim thereto.

Wherefore plaintiff prays judgment adjudging the said deed executed and delivered by plaintiff to defendant John E. Blackman on the 25th of June, 1889, to have been obtained by fraud and false representations, and to be therefore, void, and ordering the said defendant to execute a good and sufficient reconveyance to plaintiff thereof, reciting the finding and decision of this court in that
81 regard, and that the said defendant John E. Blackman be enjoined and forever restrained from prosecuting said action in the district court of Pottawattamie county, Iowa, or any other action affecting said lands against the plaintiff and his wife Nellie M. Dull, or either of them, and from executing any further or other

conveyance of said lands, or from encumbering the same in any way, and providing such further and other relief as in equity the plaintiff may be entitled to.

MARTIN J. KEOGH,
Plaintiff's Attorney.

Temple court, New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Daniel Dull, the plaintiff in the above-entitled action, being duly sworn, says: He has read the foregoing complaint and knows the contents thereof, that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

DANIEL DULL.

Sworn to before me this 3d day of November, 1892.

WM. L. SNYDER,
Notary Public, New York County.

Supreme Court, Westchester County.

DANIEL DULL, Plaintiff, *against* JOHN E. BLACKMAN, MARY E. BLACKMAN, George F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants.	Code of Civil Procedure, Secs. 610 to 621. Injunction by Order.

82 It appearing satisfactory to me, by the complaint herein and the affidavit of Daniel Dull that sufficient grounds for an order of injunction exist upon the ground that the plaintiff is the true owner of certain lands in Pottawattamie county, Iowa, described as follows, viz: The south half (S. ½) of section numbered four (4); the northeast quarter (N. E. ¼) of section numbered nine (9); the northeast quarter of the southeast quarter (N. E. ¼ S. E. ¼) of section numbered nine (9); and thirty-one and $\frac{66}{100}$ acres out of the southeast quarter of the southeast quarter (S. E. ¼ S. E. ¼) of section numbered nine (9), all in township seventy-six (76) north of range forty-two (42) west of the 5th principal meridian; that the defendant John E. Blackman by fraud has obtained from said Dull a deed, conveying said lands to said Blackman; that said Blackman is making conveyances thereof, and is encumbering the same; and has instituted a suit in the district court of Pottawattamie county, Iowa, against said Daniel Dull and Nellie M. Dull, his wife, for the purpose of obtaining a judgment against them that they have no title to or claim upon said lands.

I do hereby order, that the defendant John E. Blackman refrain from conveying or encumbering said lands or any part thereof, and from further prosecuting against said Daniel Dull and Nellie M. Dull said suit in the district court of Pottawattamie county, Iowa, or permitting the same to be prosecuted, and from commencing or

prosecuting any other action affecting the title of said Daniel Dull and Nellie M. Dull to said lands, until the further order of this court, and in case of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated November 9, 1892.

(Signed) EDGAR M. CULLEN,
Justice Supreme Court.

83 The defendants Daniel Dull and Nellie M. Dull, to sustain the issues in their answer and cross-petition, offer the following evidence:

Exemplified copy of the record in the case of Daniel Dull *vs.* John E. Blackman, Ed. Phelan, George F. Wright and E. R. Duffie *et al.*, in the supreme court of Westchester county, New York, as follows:

The People of the State of New York, by the grace of God, free and independent, to all to whom these presents may come or may concern, Greeting:

Know ye, that we, having examined the records and files in the office of the clerk of the county of Westchester, and clerk of the supreme court of said State for said county, do find a certain judgment-roll there remaining, in the words and figures following, to wit:

Supreme Court, Westchester County, New York.

DANIEL DULL *vs.* JOHN E. BLACKMAN, ED. PHELAN, E. R. DUFFIE, *et al.*	Before Hon. J. O. Dykman, Judge.

WHITE PLAINS, *April 29th*, 1893.

DANIEL DULL, sworn, testifies as follows:

84 Reside in New York; am engaged in boring artesian wells. In the spring of 1889 a card was left at my place of business, with the name of Wright, Baldwin & Haldane, attorneys, of Iowa, Mr. Haldane's name being underscored. Was acquainted with Mr. Wright, a member of the firm, having bought my land of him. On account of this acquaintance I called at the place indicated on the card, and found Blackman and Haldane there. Haldane said that his reason for calling was that Blackman had title to certain lands known as the old Bloomingdale road, and that they were there to get possession of the property, either by litigation or amicable settlement.

I told them I did not own the land, but had a twenty-year lease, and building, on it, the land belonging to a man by the name of Lyon. Haldane gave me a detailed account as to the title claimed. That one Hopper, a great many years ago, owned the land, and on his death, in 1779, had willed it to his children, and Blackman held title through them. Blackman said there were 200 heirs of Hopper scattered over the country, and that he had had a great deal of trouble to find them. They suggested that being situated as I was, I might

be a benefit to them in obtaining a settlement between them and my landlord. That they were very anxious to make a settlement, as it would assist them in making a settlement with others. I said that I would consider the matter, and left them. Afterwards I arranged a meeting with them at the Grand Central hotel, with an attorney, Mr. Lamison, in whom I had confidence. Haldane made a statement to him as to the nature of the title Blackman claimed. The point I wanted to know was when the road was vacated, as it had been, by straightening Broadway, who would own the land, to whom it would revert. That was the object of the meeting. Lamison thought the title would fall back to the Hopper heirs and that the title was good.

85 I next met Blackman at his office, and asked him as to the quantity of title he held. *He took his pencil and figured it up, and said 86 per cent.*, and that he was certain of getting the balance, excepting 4 or 5 per cent. *He said he had money and property worth $1,200* in Nebraska, and was to prosecute the claim and give the heirs one-half the proceeds. He had a contract with Haldane to give him one-half of his interest, or one-quarter of the whole.

I next saw Blackman at the Grand hotel. He first proposed to sell me the strip for $10,000 cash. I wanted to trade him western land, and agreed to give him 400 acres in case he succeeded in establishing his claim. This agreement was sent to Mr. Wright by Mr. Blackman, as Wright was interested in the deal, but he wanted the best land in the farm, the valley land. The result was, we finally settled on 551 acres, to be given in exchange for his interest in the Broadway property. Possession was to be delivered January 1, 1890.

I had a track of 1,385 acres in one body, on which there was a mortgage of $10,000 to one Holcomb, and I was to procure a release of it as to the 551 acres. Mr. Haldane drew up the papers and I executed the deed. A deed was also drawn up of the New York strip to me, and placed in escrow in the hands of one King to await the result of Blackman's litigation, which was to be pushed in a vigorous manner. It was subsequently placed in Mr. Haldane's hands in escrow. There was also a mortgage of $10,000 on the strip, to be delivered to me as an evidence of good faith and guaranty upon Mr. Blackman's part, but this mortgage it was agreed was not to be placed on record unless I should choose to do so to protect myself. But before I could place it on record for my protection in any manner, Blackman and Haldane had sold the strip to my landlord, Mr. Lyon, for $10,000 cash.

86 I had a building on the leased Broadway property that cost $45,000. The lease between me and my landlord was not satisfactory, and I had so indicated to Blackman. He decided it would be better to try and sell the whole property to my landlord, building and all, as it would save him the cost of prosecuting this claim, and it was decided that my deed and mortgage should not be placed of record, and I entered into negotiations with my landlord to sell him the disputed strip and the building together. I reported progress of these negotiations with Lyon to Blackman, from time to

time. Blackman claimed he had $2,000 in the bank and enough to carry on the litigation to a successful issue. But a few days afterwards he asked me to loan him $250 for expenses, and I then first believed he was deceiving me as to his financial condition.

Not long after I went into his office and reported to him how I was getting along with my landlord in the negotiations. He said to me: "Mr. Lyons has been in here to see me, and I think we are going to be able to close that matter up in a short time, but I think it is better that you stay away from him for a few days, and let me work with him."

I said, "All right, I will do that." A few days afterwards my landlord, Mr. Lyon, came into my office, and told me that he had bought the Broadway strip from Blackman for $10,000, and his deed was on record. I said, "I don't believe it," and went to Blackman's office and found Haldane in. He said Blackman was over at the recorder's office. We went there and found Blackman, and Blackman tried to get Haldane to tell me of the trick he had played me. Haldane refused to do it. He said, "You must tell him yourself." Finally Blackman blurted out, "I have done it"—meaning he had made the sale of the strip to Lyon. I spoke to him about the $250 I had loaned him, and left.

87 Afterwards Blackman wrote me, offering to convey the land, but he had already deeded it to Wright, and Wright had mortgaged it to Askwith, and it was but a trick to get me into a lawsuit, and get possession of certain papers.

Blackman, after this, deeded the property to Phelan, who then mortgaged it to Duffie, and before this Blackman had deeded it to Savage.

When I learned of these transactions in relation to my property out West, in order to give notice to the people that I still claimed it, I made a deed of it to my wife, Nellie M. Dull, to keep them from going any further, and began this action to set aside the conveyance to Blackman.

After the conveyance of the strip to Lyon, I next heard of Blackman through the following letter:

"CHICAGO, *Feb.* 2, 1892.

Daniel Dull, Esq., New York city.

DEAR SIR: I was at La Crosse yesterday; saw W. W. Holcomb, and he has agreed to meet you and me here at any time we may set. I explained to him all about my transactions with you in New York. It is impossible for me to come to New York to see you for some weeks yet, and this matter needs your attention at once, for George Wright will try to force a foreclosure of the mortgage. I am prepared to make you a proposition that will settle all matters of difference between you and I, I think satisfactory to you. I do not care to do so by letter, but must see you personally. I have a suit pending again-t Wright to cancel my deed to him. Wright, Baldwin or Haldane will not figure in the settlement between

88 you and I. In fact, I don't care to let them know anything about it. I am sure they have tried to do me up. I think

I can show you who was the author of the deal with you. Please wire me, care H. W. Martin, 119 Dearborn street, Chicago, when and where you will meet us. I must move quickly in this matter to protect our rights against the men who are trying to squeeze me, and with your co-operation I can do so. Don't stop to write, but come at once.

Very truly yours, JOHN E. BLACKMAN."

I went to see him a few days after the letter, and found him in company with a lawyer named Duffie, from Omaha. Blackman was trying to induce Duffie to take an interest in the New York deal, and have him take the place of Haldane as counsel. Duffie stated, in Blackman's presence, that he would not have anything to do with the New York deal until Blackman had settled with me to my satisfaction. That he would have nothing to do, and would not consider a proposition on a matter with such a cloud upon it. He stated that Blackman's conduct toward me was high swindling.

Blackman stated that that rascal, Haldane, had led him into this rascality, or whatever he might call it, that he not only had persuaded him, but had forced him into it, and there had never been a time since that he did not regret it, and intended to make me good for it.

He said he considered it his first duty to return to me the property in Iowa, in the condition he found it, and make me good for all damages in every way to my landlord. First of all, he agreed to turn back my land to me in the condition he found it. He
89 said he had a suit with Wright to compel him to reconvey the western land, and wanted me to act in unison with him in that suit, and that as soon as he could succeed in having the deed cancelled he would convey the property to me.

In addition to this he wanted to sell part of his New York interest, one-third of 25 per cent., which he owned. This was after we returned to New York. A memorandum of it was prepared, but as I found he did not own the interest claimed, it was never signed. He and Haldane claimed to have 50 per cent. between them. They then gave 21½ per cent. to Governor Hoadley for prosecuting the claim, leaving 37½ per cent. between them, and they then made an agreement that Blackman should take 12½ per cent. of the 37½ per cent. and sell it or put it up for money, and divide the proceeds between them. This contract was never signed between them. Blackman said he signed the first part, and by a trick got possession of it, and refused to sign the last section, in regard to the 12½ per cent., and when they had taken out 12½ per cent., that left them 12½ per cent. each, instead of his owning one-quarter.

In consequence of learning these facts, and learning that he didn't hold 86 per cent. of the property, no agreement was ever signed. I refused to sign it. I had already advanced him, on his representations as to his ownership, between $2,000 and $2,500.

Blackman never conveyed the property back to me in Iowa, but made a deed to a man by the name of Savage, and also to Phelan, and executed a mortgage on the land to Mr. Townsend; and with-

out telling me, got me to go security to Townsend for the amount that he had mortgaged my land for. He had also procured
90 a mortgage on the land for Duffie for $5,500. I refused to advance Blackman any more money, and he immediately went West and brought suit to quiet title to the Iowa land against me. I then arranged to get out an injunction here, restraining him from going forward, and he then withdrew from the suit and had Mr. Phelan substituted as principal in his place.

Cross-examination on the part of John E. Blackman:

I first met Blackman in the spring of 1889, and he first explained to me about the Hopper family. I desired to obtain the title to the Broadway strip for the purpose of negotiating with my landlord, Mr. Lyon, as to the terms of my lease. The lease provided that he was to buy the building, at the end of the lease, for $22,000, and the building had cost me $45,000. Blackman told me he owned 86 per cent. of the Hopper interest, which I found was untrue.

Redirect:

Blackman figured up his interest at 86 per cent. of the entire title. I relied upon the absolute amount of percentages. He had already conveyed the western land to some one else, and he couldn't redeed it to me.

CHARLES HALDANE.

Reside in New York city—attorney-at-law.

Have had dealings with Mr. Blackman in reference to the Broadway strip. Was never employed by Blackman as his legal adviser. I am working under a contract with him.

91 By the COURT:

Q. You do not admit that the relation of attorney and client existed between you?

A. No, sir.

In June, 1889 Blackman and I figured out what interest he had of the Hopper heirs in the Broadway property, and it *amounted to between 53 and 54 per cent.* At that time, June, 1889, *he did not have 84 or 86 per cent. of the interest in that title.* I have a written statement, showing Mr. Blackman's interest in that title, and *I know it of my own knowledge.* In June, 1889, *I knew Blackman was very hard up, and he admitted to me that he had no means.* We came here in December, 1888, and in February, 1889, he had to dispose of his interest in a portion of this very matter to raise $500. He was out of money. I don't know as he ever had any money of any consequence—not $500, to my knowledge. And we were together every day, until he sold this corner to Mr. Lyon, and got some money out of that.

This paper, here, is a deed that I held on this property. It was executed in February, 1889. Between that date and June, 1889, I think, Mr. Blackman complained that I was not sufficiently pro-

tected with that deed in my possession, and it was supplanted by another paper, which he also has in his possession. This changed it from an absolute deed into a sort of a mortgage.

I knew of the existence of the Holcomb mortgage—$10,000, on the Iowa property, at the time of these transactions and prior. Mr. Dull made the proposition to give Blackman three hundred acres absolutely of his Iowa land, and take his chances of Mr. Blackman getting possession of the corner, and 100 acres contingent on
92 his obtaining such possession. It was agreed that Mr. Wright, my partner, in Council Bluffs, from whom Mr. Dull had purchased this land, should make the selection, provided he did it fairly. There were several consultations, and Dull finally made the proposition that if we would let him select the land himself he would give us more, and he did select, as I remember, this identical 551 acres, now in this case.

During the negotiations I went to Chicago, to meet Mr. Wright, and see what the value of the land was, and what condition it was in, and whether we could make it pay. We wanted his judgment upon it. At that conference in Chicago, Wright informed me of the condition of the title; that the land was mortgaged for $10,000 to Holcomb, and *upon my return to New York Blackman and I talked it over.* You understand, this mortgage of $10,000 was on a 1,400-acre tract, of which we were getting 550. *Blackman and I concluded to take Mr. Dull's warranty deed, because the other 850 acres were worth very much more than the mortgage, so we determined to take his deed with the covenant of warranty to protect Mr. Blackman, and take our chances on getting the mortgage paid off out of the other 850 acres.* Nothing was said between Dull and Blackman as to whether there was a mortgage on the land or not. *We took the covenants of the deed and concluded to rely on that, and Mr. Blackman and I remarked—"Well, he has signed the deed with the full covenant of warranty in it."*

Blackman said he thought it would be all right, anyway, for the other land was worth a great deal more than the mortgage.

Mr. Blackman and I had a conversation in the office in regard to the interest he had in this Hopper property, in which refer-
93 ence was made to the form of the deed that had been placed with Mr. King in escrow for the Broadway property, and in that conversation I asked Mr. Blackman what Mr. Dull understood he was getting, whether we had got to give it to him—the whole title, or what he understood he was getting—and Blackman said it was something over 80 per cent.—84 or 86, I don't remember. He then remarked to me that *we didn't have that much*, and he said, "Well, we will get it anyway."

In July, 1889, Mr. Wright called at our office in New York; talked about my being away from Council Bluffs so long, and how I was going to make it in New York, and whether we were going to have money enough to prosecute this great big claim, and he said that he couldn't furnish me with any more money in New York—he was losing money at both ends—my services at Council Bluffs, and I was not earning any cash; but if Mr. Blackman would give him a deed for the land that he got from Dull, that he would take it,

and advance as needed, $10,000 on it. I got Wright and Blackman together, and a deed was prepared and signed by Blackman, and a memorandum showing the terms on which it was delivered to Mr. Wright. And Mr. Wright was to execute the memorandum and return it to me, showing the terms upon which he had received the deed. The deed was afterwards executed and sent to Mr. Wright, with a written memorandum, in my handwriting, showing the terms to be substantially as I have stated. He never returned the memorandum, but in return the letter dated August 19th, 1892. (See page 53, *ante.*)

Mr. Wright never advanced me any money on this land. Blackman, after Wright wrote this letter, deeded it to E. P. Savage, of Omaha, not to sell it, but in order to *block Mr. Wright in*
94 *operating*, and Blackman said that Savage, shortly afterward, gave him a deed back, which he put in his pocket. He said the *purpose of this conveyance was to block Wright from making any more contracts with the land, and that Mr. Savage might get possession and protect his interests.* In January, 1892, Blackman went to Omaha, and on his return told me he had given Ed. Phelan a warranty deed for the land, as security for $75, which he had to have to get back to New York with.

By the COURT: Does Mr. Wright now claim to hold that land?

A. Mr. Wright executed a mortgage, but took advantage of the deed, which Mr. Blackman had given him, to execute a mortgage.

Q. Did he record his deed from Blackman?

A. Yes, sir.

Q. And claimed to own it, so far as to give a mortgage on it?

A. Yes, sir.

Afterwards Blackman brought an action in Iowa, to cancel the deed to Wright, claiming the absolute and unqualified ownership. Subsequently, in September, 1892, Blackman agreed with Phelan to treat the deed given as security for $75 as an absolute conveyance, and Phelan was substituted as plaintiff against Wright and Askwith. And *Duffie is the attorney for both parties—Phelan and Blackman*, and claims a mortgage on it of $5,500, for fees. Blackman also made a mortgage on the Iowa land to one Townsend.

After Blackman begun the action in Iowa, an injunction was
95 issued in this action, restraining him and Phelan from prosecuting it, and he changed plaintiffs by substituting this man Phelan as plaintiff.

Cross-examination:

I was not admitted to practice as an attorney in New York until October, 1889. I was a partner with Blackman. Under our agreement it was not necessary for me to join in the conveyances by Blackman, of the Hopper family. He had the title.

Plaintiff rests.

Defendants' Evidence.

JOHN E. BLACKMAN.

Reside in New York city. Am defendant in this action. I left a card at Mr. Dull's office, and requested him to call at our office, on Broadway. I told him the nature of our claim; showed him a map of the property, and that we were gathering up as much of the title as we could, and had enough to assert it; and having seen Mr. Dull's name on the sign, on the corner, recognized it as the name of whom Mr. Haldane's partner, Wright, had done business with, and we called on him, thinking perhaps some amicable settlement might be made with him *which would influence a settlement with the others.* Dull stated that he was a tenant, under a lease, of the property, under a man named Lyon; that there were certain conditions in his lease which he had requested Lyon to change, and so far he had refused to do so, and he thought if he could control this interest, and it was what we represented it to be, he might get a favorable settlement with Lyon. Before we left *it was agreed with Mr. Dull, that Dull should have the first offer or opportunity to buy the*
96 *corner.* The matter was talked over, subsequently, in several interviews. Dull said he wanted it for the purpose of using it on his landlord. Told me what he had said to Lyon. He said he thought Lyon would pay a good price for the property, and that he had made Mr. Lyon an offer to take his building and the lease and clean up the title, but he didn't know whether Lyon would accept or not. The result was, a trade was made on the 25th day of June, 1889. I told Dull that I had obtained title to as many of the heirs as I had been able, and showed him the list. Dull gave me a warranty deed for the Iowa land for my claim against the corner on Broadway. I was to execute a mortgage and deliver it to him, for $10,000, and then execute a deed, and it was to be placed in escrow, with some one we might select, and we were to delay bringing suit against the corner until we should receive instructions. The delay of suit was for the purpose of making some settlement with Mr. Lyon. Dull executed and delivered his deed to me June 25th, 1889, and in August I executed a deed to Mr. Wright, of Council Bluffs, of the firm of Wright, Baldwin & Haldane, under an arrangement that he was to furnish $10,000, in sums as needed for the prosecution of this claim here. I delivered the deed to Mr. Haldane, who was to obtain a contract from Wright, showing the conditions under which he held the deed. Wright never furnished any money under the agreement, but claimed to hold the land for $5,000, which he said Haldane owed him. I began suit against him in January, 1892, to set aside the deed. He filed an answer that the deed was absolute, and also a cross-bill asking that the mortgages which were placed on the land by Dull be foreclosed on the land still owned by him, subject to the payment of the mortgage. Wright never advanced me any money on the land for the reason that it was mortgaged, and he wanted to deduct

$5,000 that Haldane owed him. I never confessed to Mr. Dull
97 that I was defrauding him with regard to this property. *The transaction between Mr. Dull and myself did not terminate as either of us expected it would,* and in all my talk with Mr. Dull I claimed he was as much to blame as myself. If he had released the mortgages so that the land could have been available for purposes for which it was exchanged, *the other deal would not have been necessary.* The $10,000 received from the sale to Lyon were deposited in some bank downtown, and part of it was given to Haldane and part to me. I brought an action against Wright to set aside this deed in Iowa. Wright filed a cross-petition and answer. Afterwards I made an arrangement with Phelan, in January, 1892, and borrowed some money of him and gave him a deed to this land. *The deed was given, not only to secure the amount of money, but to keep Wright from disposing of the land. I had deeded the land to Savage first for the same purposes,* but he had redeeded to me. In September, 1892, Duffie telegraphed me that my case against Wright was about to be tried. When I arrived I found it had been adjourned, and then negotiations began again, and I saw Phelan and tried to sell him the land, subject to Mr. Wright's claim.

Phelan first agreed to pay Wright the $5,000 he had advanced Haldane, provided he would assign his claim against Haldane to Phelan, or to me, and guarantee that he would furnish the evidence and put it in judgment; guarantee that it was a valid claim against Haldane. When they came to draw the papers Wright refused to do that, and finally *Wright told him he didn't have any claim against Haldane, that it was Mr. Baldwin,* and we stopped right there. Phelan paid me $50, and then sent me the balance to make up the $500, after I returned to New York. At any rate I have received $1,075
98 from Phelan, and Phelan has assumed a debt of one thousand dollars or thereabouts from me to Savage. He was the party to whom I deeded the land in the first place.

(Judgment for the plaintiff for the relief demanded in his complaint, and costs.)

Supreme Court, Westchester County.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants. } Summons.

To the above-named defendants and each of them:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judg-

ment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, Nov. 3, 1892.

MARTIN J. KEOGH,
Plaintiff's Attorney.

Office and post-office address, No. 5 Beekman street, Temple court, New York city.

(Here follows copy of bill of complaint in Dull *vs.* Blackman, as set out on page 76 *ante*.)

99 Supreme Court, Westchester County.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN and Others, Defendants. } Amended Answer.

The defendant John E. Blackman, by J. Albert Lane, his attorney, for his amended answer to the petition of the plaintiff in the above-entitled cause, states:

For a first separate and distinct defense to the claim of the plaintiff,

I. That he admits the allegations contained in the first, second, third and fourth paragraphs of the petition.

II. Defendant denies that, intending to cheat and defraud plaintiff or otherwise he made any false representations to plaintiff; but says that a short time prior to the 25th day of June, 1889, the plaintiff came to the office of Charles Haldane, of 261 Broadway, in the city of New York, in response to a call, made some days prior thereto, at plaintiff's office by the said Haldane; and at that time in the presence of defendant, the said Haldane gave the plaintiff a general statement of the claim of this defendant to said property at the southeast corner of Broadway and 51st street. The plaintiff then and there represented to said Haldane and this defendant, that plaintiff was not the owner of said property, as defendant had supposed, but that plaintiff had leased the same for a term of years of one A. M. Lyon; that if the terms of the lease under which plaintiff held said property were strictly enforced by the said Lyon, plaintiff would suffer great loss and inconvenience thereby. That plaintiff had often requested the said Lyon to change the terms of
100 said lease, but that said Lyon had always refused, and insisted on the strict legal performance thereof. Plaintiff then asked this defendant if he would give plaintiff the first chance to purchase defendant's claim to said property, if upon investigation plaintiff found it as represented, and stated as his reason for wanting it that with it he could get even with Lyon. Afterwards at the request of plaintiff, the said Haldane and this defendant went with plaintiff to the Grand Central hotel, in New York city, and there met one Charles N. Lamison, a lawyer in whose opinion plaintiff claimed to have great confidence. The said Haldane then and there made a

statement in detail to the said Lamison and plaintiff, of the claim of this defendant to said property.

Defendant further says, that plaintiff was fully informed as to the claim of this defendant to the said property and the interest which had been conveyed by the heirs of the said John Hopper, deceased, and which was then held by this defendant. And defendant expressly denied that he ever made any statement to plaintiff that he did not believe to be true.

III. Defendant further says that after plaintiff had fully investigated defendant's claim to said property, defendant offered to take $10,000 cash therefor, or the equivalent in Iowa land. Thereupon plaintiff offered to give three hundred acres of his Iowa farm, the same to be fairly selected, and which should belong to defendant, whether his claim to said Broadway property should prove to be good or not. That if defendant succeeded, then plaintiff would give defendant 100 acres more adjoining the first three hundred acres, all to be free and clear of liens and incumbrances. That plaintiff would execute and deliver the deed to the three hundred acres, and execute a separate deed for the 100 acres, and place it in the hands of some person acceptable to both parties, to be delivered to
101 defendant as soon as his claim was fully established, and to be surrendered by plaintiff as soon as it should be finally and legally determined that defendant's claim was not good.

That therefor this defendant should execute a mortgage upon said property at Broadway and 51st street in such form as might be proper and satisfactory, and in case of success, to execute an absolute conveyance.

This defendant refused said offer so far as it related to the quantity of land, and the contingency. Negotiations were finally concluded by the terms of which plaintiff on or about the 25th day of June, 1889, made, executed and delivered to defendant a deed containing the usual covenants of warranty, for five hundred and fifty-one acres of his Iowa farm, which the said Dull represented to this defendant as being free and clear from all incumbrances and which was to belong to defendant, whether his claim to said Broadway property proved to be good or not, and in consideration therefor, this defendant executed and delivered to plaintiff a mortgage for ten thousand dollars upon said property at Broadway and 51st street, which mortgage plaintiff still holds. And also executed an absolute deed for said property, and delivered the same to Charles Haldane with instructions to deliver the same to one King, who was, as defendant believes, in the employ of plaintiff, and which delivery to said King was made.

IV. Defendant denies that he ever represented to plaintiff that he was a possessor of ample funds, and property wherewith to prosecute said action, but says that he repeatedly told plaintiff that all he wanted of said Iowa land was to convert the same into money wherewith to prosecute his claims against property in the city of New York and the State of New Jersey.

102 V. The defendant admits that on the 2d day of August, 1889, he executed special warranty deed of the Iowa land to

the defendant George F. Wright, and he alleges the fact in relation thereto to be that the said Wright had agreed with the defendant to advance him money as the defendant might need and call for the same, to an amount not to exceed $10,000, and that the conveyance of said land to the said Wright was made as security for the repayment of any moneys which might be advanced by said Wright to this defendant under the aforesaid agreement, and the defendant alleges that the said Wright refused to advance any money to defendant under said agreement, until defendant should procure the release of the mortgages placed thereon by plaintiff prior to the execution of the warranty deed to defendant, and has never loaned or advanced to the defendant any money whatever under said agreement under which he holds the conveyance of said land, but he pretends and claims to hold the same as security for $5,000 or upwards by him advanced, or claimed to be advanced to one Charles Haldane, and refuses to reconvey said land to this defendant, and that it was partly to remove the cloud cast upon the title of this defendant by said deed and partly to relieve said land from the lien of said mortgages placed thereon by plaintiff, that the action in Pottawattamie county, Iowa, was commenced and the original petition in said action made the said George F. Wright and his wife alone parties defendant therein.

VI. Defendant further admits that the said George F. Wright, had executed a mortgage on said property to the defendant A. W. Askwith, and defendant admits that to the best of his information said mortgage was executed and delivered without any consideration.

VII. Further answering, the defendant states that he ad-
103 mits the value of the Iowa land to be about $15,000, but says that at the time he received said deed from Dull, to wit: June 15, 1889, it was only worth about $10,000, as defendant was informed and believes. He denies that he has himself received any of the rents or profits derived therefrom, and alleges the fact to be that the rents and profits thereof have been collected by the defendant George F. Wright, and defendant has personally no knowledge or information sufficient to form a belief as to what amount has been received in rents and profits from said land by the said Wright.

VIII. Further answering, the defendant admits that he is willing and he did offer to reconvey said land to the plaintiff, but says that said offer was made upon the condition that the plaintiff should return to defendant the mortgage and the deed delivered to said Haldane, and all other papers given him by defendant in consideration thereof, of which offer the plaintiff took no notice, and to it made no response, and plaintiff then held, and still holds the mortgage which defendant gave him, and has never offered to release or return said mortgage to defendant cancelled, and neither said plaintiff nor said King have ever offered to return said deed or reconvey said lands to the defendant.

And for a second and separate defense to the claim of the plaintiff herein, this defendant repeating all the statements and allegations hereinbefore set forth, alleges:

IX. That prior to making said deed to defendant, plaintiff had

executed mortgages upon the said 551 acres of Iowa land, together with other lands owned by plaintiff, adjoining, for large amounts.

That at the time of the making of the contract with this
104 defendant and the execution and delivery by the plaintiff of the deed of said Iowa lands, the plaintiff knew that said mortgages were an existing lien upon said land, and the plaintiff fraudulently and falsely represented to this defendant that said lands were free and clear of all encumbrances. This defendant trusting and relying solely upon the representation of the plaintiff, and without any knowledge of the existence of such liens, received the deed of said premises from the plaintiff, and in consideration therefor executed and delivered to the plaintiff the said mortgage on the Broadway property. When defendant ascertained that said mortgages were existing liens upon said land, he requested plaintiff to pay off said mortgages, or have them released in some manner, so that they would not be liens on the defendant's land, plaintiff repeatedly promised to have said mortgages released, but has ever since failed to do so, and they still exist as liens of record on said land.

And for a third, separate and distinct defense to the claim of the plaintiff herein, this defendant repeating all the statements hereinbefore set forth, alleges:

X. That prior to the commencement of this action he has conveyed said Iowa land to his codefendant Edward Phelan. That prior to said conveyance he had borrowed from said Phelan certain moneys and gave him a deed to said lands as security for the money borrowed. That thereafter and on or about the 15th day of September, 1892, he sold said lands absolutely to the said Phelan, and who paid therefor by assuming and agreeing to pay certain debts then due and owing from this defendant to the defendant Edward R. Duffie, and to one E. P. Savage, a resident of South Omaha, Nebraska, and by giving his evidence of indebtedness for any balance of the purchase price, and he alleges the fact to be
105 that the said Phelan is now the absolute owner of all of said liens, and this defendant has no interest therein.

For a fourth separate and distinct defense to the claim of the plaintiff herein, this defendant repeating all the statements and allegations hereinbefore set forth, alleges upon information and belief:

XI. That prior to the commencement of this action, and on or about the 22d day of September, 1892, the said Daniel Dull duly executed, acknowledged and delivered to one Nellie M. Dull a certain instrument in writing which purported to convey to her the premises in Pottawattamie county, Iowa, heretofore conveyed by him to this defendant, which instrument was, as this defendant is informed and verily believes, duly recorded in the office of the recorder of said Pottawattamie county, on the 26th day of September, 1892; this defendant therefore alleges that the claim or cause of action, if any, which existed in favor of the plaintiff herein against this defendant, for the annulling of said deed from Daniel Dull to John E. Blackman, which conveyed said premises accrued

to the said Nellie M. Dull by virtue of the said conveyance dated September 22d, 1892, and that the plaintiff herein is not the real party in interest, and is not entitled to maintain this action.

Wherefore the defendant John E. Blackman asks judgment *diminishing* the complaint, besides the costs and disbursements of this action.

J. ALBERT LANE,
Attorney for Defendant John E. Blackman.

Office and post-office address, 35 Wall street, New York city.

CITY AND COUNTY OF NEW YORK, *ss:*

106 John E. Blackman, being duly sworn, says that he is the defendant above named; that he has read the foregoing amended answer; that the same is true to his own knowledge, except as to the statements therein alleged to be made on information and belief, and that as to those statements he believes it to be true.

JOHN E. BLACKMAN.

Sworn to before me this 13th day of January, 1893.

RICHARD I. TREACY,
Notary Public, New York County.

Supreme Court, Westchester County.

DANIEL DULL, Plaintiff, *against* JOHN E. BLACKMAN, MARY E. BLACKMAN, George F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants.	Injunction by Order.

It appearing satisfactory to me, by the complaint herein, and the affidavit of Daniel Dull, that sufficient grounds for an order of injunction exist upon the grounds that the plaintiff is the true owner of certain lands in Pottawattamie county, Iowa, described as follows, viz: The south half (S. $\frac{1}{2}$) of section numbered four (4); the northeast quarter (N. E. $\frac{1}{4}$) of section numbered nine (9); the northeast quarter of the southeast quarter (N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$) of section numbered nine (9), and thirty-one and $\frac{6}{100}$ acres out of the southeast quarter of the northeast quarter (S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$) of section numbered nine (9) all in township seventy-six (76) north of range forty-two (42) west of the 5th principal meridian; that the defend-

107 ant John E. Blackman by fraud obtained from said Dull a deed conveying said lands to said Blackman; that said Blackman is making conveyances thereof, and is encumbering the same; and has instituted a suit in the district court of Pottawattamie county, Iowa, against said Daniel Dull and Nellie M. Dull,

his wife, for the purpose of obtaining a judgment against them that they have no title to or claim upon said lands—

I do hereby order, that the defendant John E. Blackman refrain from conveying or encumbering said lands or any part thereof, and from further prosecuting against said Daniel Dull and Nellie M. Dull said suit in the district court of Pottawattamie county, Iowa, or permitting the same to be prosecuted, and from commencing or prosecuting any other action affecting the title of said Daniel Dull and Nellie M. Dull to said lands until the further order of this court, and in case of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated Nov. 9, 1892.

EDGAR M. CULLEN,
Judge Supreme Court.

Supreme Court, Westchester County.

DANIEL DULL, Plaintiff, *against* JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. WRIGHT, ASA W. ASKWITH (Asa Being Fictitious, Christian Name Unknown), EDWARD PHELAN, EDWARD R. DUFFIE, Defendants.	Order of Publication.

It appearing to my satisfaction by the summons and by the complaint in this action, duly verified the 3rd day of November,
108 1892, showing a sufficient cause of action against the abovenamed defendants, and due proof by the affidavit- of Daniel Dull, the plaintiff, and Michael D. Griffin, verified December 7th and 9th, 1892, and the certificate of the sheriff of the county of Westchester, duly presented to me and filed herewith, upon which said complaint, affidavits and certificate this order is founded, that the defendants George F. Wright, Asa W. Askwith, Edward Phelan, and Edward R. Duffie are not nor either of them residents of the State of New York, but that defendants George F. Wright and Asa W. Askwith reside in the city of Council Bluffs in the State of Iowa, and defendants Edward Phelan and Edward R. Duffie reside in the city of Omaha in the State of Nebraska, and that the plaintiff has been and will be unable, with due diligence, to make personal service of the summons upon said defendants or either of them within this State, and that a cause of action exists in favor of plaintiff against the defendants for an injunction perpetual, as set forth in the complaint herein.

Now on motion of Martin J. Keogh, plaintiff's attorney,

Ordered, that the service of the summons herein upon the defendants George F. Wright, Asa W. Askwith, Edward Phelan and Edward R. Duffie be made by publication thereof in the Eastern State Journal, and in the New Rochelle Paragraph, two newspapers published in the county of Westchester, as most likely to give notice to said defendants and each of them, not less than once a week for six successive weeks, or at the option of the plaintiff by service of

the summons, and a copy of the complaint and of this order without the State upon the defendants George F. Wright, Asa W. Askwith, Edward Phelan and Edward Duffie personally, said defendants and each of them being of full age.

109 It is further ordered, that on or before the day of the first publication, the plaintiff deposit in the general post-office of the city of New York one set of copies of the summons, complaint and of this order contained in securely postpaid wrappers, directed to each of said defendants as follows: George F. Wright, Esq., Council Bluffs, Iowa; A. W. Askwith, Esq., Council Bluffs, Iowa; Edward Phelan, Esq., Omaha, Nebraska; Edward R. Duffie, Esq., Omaha, Nebraska.

Supreme Court, Westchester County.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants.
} Findings.

In this action tried before the court at special term at the courthouse in the village of White Plains, Westchester county, in April and May, 1893, I do make and find the following findings of facts and conclusions of law, and decide as follows:

Findings of Fact.

First. That on the 25th day of June, 1889, the plaintiff Daniel Dull was the owner in fee-simple of certain lands in the county of Pottawattamie and State of Iowa, described as follows, namely:

The south half ($\frac{1}{2}$) of section numbered four (4), the north-
110 east quarter (N. E. $\frac{1}{4}$) of section numbered nine (9), the northeast quarter of the southeast quarter (N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$) of section numbered nine (9), and thirty-one and $\frac{6}{10}$ acres out of the southeast quarter of the southeast quarter (S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$) of section numbered nine (9), being the part of said last-mentioned forty-acre tract heretofore conveyed to Daniel Dull by George F. Wright; all in township seventy-six (76) north of range forty-two (42), west of the 5th P. M., in all 551.06 acres.

Second. That on or about said 25th day of June, 1889, the plaintiff conveyed said lands to the defendant John E. Blackman by a deed duly executed and acknowledged, and containing full covenants of warranty.

Third. That on said 25th day of June, 1889, and prior thereto, the plaintiff was in the possession and occupation of a parcel of land situate at the southeast corner of Broadway and Fifty-first street, in the city of New York, having a frontage of about forty feet on Broadway and extending back on Fifty-first street about thirty feet. Plaintiff held possession of said property and of the remainder

of the lot, running east as far as Seventh avenue, under a lease for a term of years from one Amos M. Lyon, and had erected upon the entire lot a brick building four stories in height, the front of which faced upon Broadway. Said building cost about forty thousand dollars.

Fourth. Prior to said 25th day of June, 1889, the defendant John E. Blackman, for the purpose of inducing the plaintiff to execute and deliver the deed referred to in the second finding of fact, represented to the plaintiff that plaintiff's landlord had no title to the part of said lot fronting on Broadway and extending back about thirty feet on Fifty-first street. Said Blackman stated and
111 represented to plaintiff that he, Blackman, owned more than eighty per cent. of the title to that portion of the lot, which title he had obtained from some of the heirs of one John Hopper, who formerly owned it. Said Blackman further stated to said Dull that he had made arrangements to acquire the title of all the other heirs of said Hopper, except a few who could not be traced, and whose interest did not amount to more than five per cent. of the entire title. Said Blackman knew when he made said statements and representations to said Dull that they were false and untrue, and he made said statements for the purpose of procuring the deed aforesaid.

Fifth. That plaintiff believed and relied upon the statements and representations of the defendant Blackman as to the amount of percentage of the Hopper title which said Blackman had acquired, and had arranged to acquire.

Sixth. Said Blackman at the same time stated to plaintiff that he, Blackman, was the possessor of ample funds, and of property which could be converted into money, wherewith to prosecute his claim to the ownership and possession of the Broadway end of said lot, and that he intended to forthwith prosecute a suit against the plaintiff, and plaintiff's landlord, to obtain possession thereof. Said Blackman knew when he made said statements and representations to said Dull, that they were false, and untrue, and he made said statements for the purpose of procuring the deed aforesaid.

Seventh. The plaintiff believed and relied upon said Blackman's statement that he was financially able to prosecute his said claim of ownership by legal proceedings.

Eighth. Plaintiff, relying on the truth of said statements and representations, agreed with the defendant John E. Blackman,
112 that the plaintiff should execute and deliver to said Blackman the deed conveying said Iowa lands; that said Blackman should execute a deed conveying to the plaintiff the said parcel of land at the southeast corner of Broadway and Fifty-first street, in the city of New York; that said last-mentioned deed should be placed in the hands of some suitable person to abide the event of the suit which Blackman was about to commence to obtain possession of the property therein described; that said Blackman should promptly commence and prosecute his said action, to final judgment, at his own expense; that if said judgment sustained and supported the claim of said Blackman, the last-mentioned deed

was to be delivered by the party having the custody thereof to the plaintiff; and that if said judgment was against the validity of said claim, said deed was to be redelivered to said Blackman.

Ninth. Said Blackman accordingly, executed a deed conveying said parcel of land at Broadway and Fifty-first street to the plaintiff, and the same was placed in the hands of one Alfred King, to be held by him upon the terms above set forth.

Tenth. The defendant John E. Blackman at the time of making his representations to the plaintiff, and at the time of obtaining from plaintiff the deed conveying said Iowa lands, had not obtained from the heirs of John Hopper, or from any person, conveyances representing more than fifty-four per cent. of the Hopper title to the parcel of land occupied by the plaintiff and hereinbefore described; and he had not made arrangements to obtain all of said Hopper title, except about five per cent. thereof; and he was not the possessor of funds, nor of property convertable into money, wherewith to prosecute his claim to said parcel or land, and he was aware of all of said facts at the time he made his statements and representations to the plaintiff, and obtained from the plaintiff the deed conveying the lands in the State of Iowa.

113 Eleventh. That prior to the commencement of this action the defendant John E. Blackman had begun an action in the district court of Pottawattamie county, Iowa, against the plaintiff in this action and Nellie M. Dull, his wife, to obtain judgment against the plaintiff herein and said Nellie M. Dull, that he, the said Daniel Dull, has no interest in said lands in Iowa, and to quiet and establish the title of John E. Blackman thereto. Said action is still pending in said district court of Pottawattamie county, Iowa.

Twelfth. In the month of October, 1889, the defendant John E. Blackman sold and conveyed all his claim and interest in the parcel of land at the southeast corner of Broadway and Fifty-first street in the city of New York, to Amos M. Lyon, the landlord of the plaintiff. Said Blackman has never paid the plaintiff any money for said Iowa lands, and has not reconveyed the same to plaintiff, but has executed various conveyances and mortgages thereupon, for the purpose of raising money, and has thereby greatly complicated and beclouded the title thereto.

Thirteenth. A preliminary injunction as prayed for in the complaint, was granted herein November 9, 1892, which was personally served on defendant Blackman on the 15th day of November, 1892, which injunction has never been vacated, modified or set aside.

As conclusions of law I find

I. That the deed from the plaintiff to the defendant John E. Blackman, dated the 25th day of June, 1889, conveying to said defendant the lands described in the fourth paragraph of the complaint herein, is void, and of no force or effect whatever.

114 II. That the plaintiff is entitled to a reconveyance of said lands from the said defendant John E. Blackman, in the form prayed for in the complaint herein, and executed in accordance with the laws of Iowa, and so as to be entitled to be recorded in Pottawattamie county, Iowa.

III. That the plaintiff in entitled to judgment perpetually enjoining and restraining the defendant John E. Blackman from further prosecuting said suit in the district court of Pottawattamie county, Iowa, and from permitting the same to be prosecuted as against the plaintiff herein or Nellie M. Dull, the plaintiff's wife, and from aiding and abetting, and from rendering any assistance to the defendant Phelan or any other person, in making or prosecuting any claim to said Iowa lands, against said Daniel Dull and Nellie M. Dull, based upon any title claimed to be derived from said defendant John E. Blackman as grantee in the deed hereby declared void.

And I direct that judgment be rendered accordingly, with costs to the plaintiff.

J. O. DYKMAN,
Judge Supreme Court.

At a special term of the supreme court, Westchester county, held at the court-house, in the village of White Plains, this 20th day of May, 1893.

Present: Hon. Jackson O. Dykman, justice.

DANIEL DULL, Plaintiff,
against
JOHN E. BLACKMAN, MARY E. BLACKMAN, GEORGE F. Wright, Asa W. Askwith (Asa Being Fictitious, Christian Name Unknown), Edward Phelan, Edward R. Duffie, Defendants. } Decree.

115 This action coming on to be heard at a special term of this court at the court-house, in the village of White Plains, before Hon. Jackson O. Dykman, on the — and — days of April and the 6th and 16th days of May, 1893, and the court having made and filed its findings of fact, and its conclusions of law and its decision in favor of the plaintiff and against the defendants, which entitles the plaintiff to this judgment and decree, whereby the court found among other things, that the plaintiff on the 25th day of June, 1889, was the owner in fee-simple of certain lands in Pottawattamie county, Iowa, hereinbefore described, which said lands plaintiff deeded to the defendant John E. Blackman, relying upon certain statements and representations made by said Blackman to plaintiff, which said statements and representations were false, and known by the defendant Blackman to be false and untrue, and which were made with intent to deceive plaintiff, and that plaintiff, relying upon the truth of said statements and representations, made said deed of said land in Pottawattamie county, Iowa, to said defendant Blackman, believing said statements and representations to be true.

The court having further found that after receiving said deed, said defendant Blackman commenced an action in the district court of Pottawattamie county, Iowa, against this plaintiff, Daniel Dull, and Nellie M. Dull, his wife, claiming to be the absolute owner of

said lands, and asking that the said plaintiff and his wife be declared to have no claim or interest therein, and that all the defendants in this action were also parties to said action in the Iowa court, and became interested in said litigation by virtue of certain conveyances made by said Blackman and his grantees, and the court having granted herein a preliminary injunction on the 9th day of November, 1892, enjoining and restraining the defendant John E.
116 Blackman from conveying or encumbering said lands, or any part thereof, and from further prosecuting against said Daniel Dull and Nellie M. Dull, said suit in the district court of Pottawattamie county, Iowa, or permitting the same to be prosecuted, and from commencing or prosecuting any other action affecting the title of said Daniel Dull and Nellie M. Dull to said lands, which said injunction was served upon the defendant Blackman personally on the 15th day of November, 1892, in the city and county of New York, which said preliminary injunction has never been vacated or set aside.

Now, on motion of Martin J. Keogh, attorney for plaintiff Daniel Dull, it is

Adjudged and decreed that the deed of the lands hereinbefore described, situate in Pottawattamie county, Iowa, made by the plaintiff Daniel Dull to the defendant John E. Blackman, which said deed bears date the 25th day of June, 1889, be and the same hereby is declared and adjudged to be void, and of no force or effect whatever, and said defendant John E. Blackman be and hereby is ordered and directed to execute to the plaintiff Daniel Dull a good and sufficient deed, conveying to the plaintiff said lands hereinbefore described, which deed shall recite the findings and decision of this court.

It is further ordered, adjudged and decreed, that the defendant John E. Blackman be and he hereby is, and the defendant Mary E. Blackman, George F. Wright, Asa W. Askwith (Asa being fictitious, Christian name unknown), Edward Phelan, Edward R. Duffie, be and each of them is hereby *is*, perpetually enjoined and forever restrained from prosecuting a certain action in the district court of Pottawattamie county, Iowa, affecting the title to said lands
117 against this plaintiff, Daniel Dull and his wife, Nellie M. Dull, or either of them, and from executing any further or other conveyances of said lands, or encumbering the same in any way. The lands hereby directed to be so conveyed by said defendant John E. Blackman to the plaintiff Daniel Dull, are situate in Pottawattamie county, Iowa, and particularly described as follows, to wit:

The south half (S. $\frac{1}{2}$) of section numbered four (4), the northeast quarter (N. E. $\frac{1}{4}$) of section numbered nine (9), the northeast quarter of the southeast quarter (N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$) of section numbered nine (9), and thirty-one and $\frac{6}{10}$ acres out of the southeast quarter of the southeast quarter (S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$) of section numbered nine (9), (being the same part of said last-mentioned forty-acre tract heretofore conveyed to Daniel Dull by George F. Wright), all in township

seventy-six (76) north of range forty-two (42), west of the 5th P. M., in all $551\frac{5}{100}$ acres.

It is further adjudged and decreed, that the plaintiff recover his costs and disbursements in this action, as taxed at $—, and have execution therefor.

J. O. DYKMAN,
Judge Supreme Court.

All which we have caused by these presents to be exemplified, and the seal of our supreme court to be hereunto affixed.

Witness, Hon. J. F. Barnard, justice, at White Plains, the 24th day of May, in the year of our Lord one thousand eight hundred and ninety-three.

J. M. DIGNEY, *Clerk.*

I, J. F. Barnard, presiding justice of the supreme court of
118 the State of New York, for the county of Westchester, do hereby certify that John M. Digney, whose name is subscribed to the preceding exemplification, is the clerk of said county of Westchester, and clerk of said supreme court for said county duly elected and sworn, and that full faith and credit are due to his official acts. I further certify, that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated White Plains, May 24th, 1893.

J. F. BARNARD.

STATE OF NEW YORK, } ss:
County of Westchester, }

—John M. Digney, clerk of the supreme court of said State, in and for the county of Westchester, do hereby certify that J. F. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the county of Westchester, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 24th day of May, 1893.

J. M. DIGNEY, *Clerk.*

L. P. JACOBSON.

Farmer, Pottawattamie county, Iowa. My land corners with the property in controversy. For the years 1890, 1891 and 1892, the average rental value of the property in controversy was three dollars an acre. There is a half section in grass and a stream running through it. The market value of the land at the present time is $40 per acre, and was the same value in August, 1889.

119 Cross-examination:

About 200 acres of the land is improved and fenced. The land has been worth $40 an acre since 1889.

Redirect:

My farm joins the land in controversy—120 acres, partially improved and partially grass land. I sold it for $45 an acre this spring. Some improvements on it were twelve or thirteen years old. The land in controversy has a house and buildings on it, and a stable, and is all fenced.

T. W. CASTOR.

Farmer. Live near the land in controversy. Am acquainted with it, and the rental value of land for the last three years. The average rental value, for the last three years, of the land in controversy, is $3.00 per acre per year. There are two houses on the land. The land is worth fully $40 an acre at the present time; in 1889, about $37.50 per acre.

Cross-examination:

The houses on the land are not first class—about 16 by 23 feet, and one-story. They add considerable to the value, and there is a little barn on the place. The barn is a pretty good one, but has been let go to rack; it is not in good shape.

Stipulation.

It is agreed that all the evidence offered by the parties, both affirmative and defensive, may be considered on the cross-petition of the defendant Dull, and that the evidence introduced by Mr. Dull, as to the rental value, may be considered as Mr. Phelan's evidence.

120 JOHN E. BLACKMAN.

I am the original plaintiff in this case, and the principal defendant in the suit in Westchester county, New York, entitled Dull *vs.* Blackman, *et al.*, and I appeared in that case by council, and contested the action on its merits.

(Witness is called upon to produce telegrams of George F. Wright, which are identified and offered in evidence, as follows:)

"EXHIBIT T."

"COUNCIL BLUFFS, IOWA, *Nov.* 21, 1891.

To Charles Haldane, Pulitzer bldg., New York:

John willing; balance land over my five thousand shall go for the New York enterprise. What is your plan? How am I to get five thousand? On receipt thereof will deed land. I can get rid of your Wright addition lots, and save you from further payment on the same. Send deed immediately, and wire when you have done so. Answer quick.

GEO. F. WRIGHT."

"EXHIBIT U."

"COUNCIL BLUFFS, IOWA, *Nov.* 25, 1891.

C. Haldane, New York:

Deed to Blackman sent Chemical bank yesterday. Will wire you hundred tomorrow forenoon.

GEO. F. WRIGHT."

"EXHIBIT V."

"COUNCIL BLUFFS, IOWA, *Dec.* 7, 1891.

C. Haldane, Pulitzer bldg., New York:

Geise surrenders his contract. Forwarded same with
121 Blackman deed to him Chemical bank, with instructions to deliver my deed Blackman, payment to Pusey's credit, $5,000.

GEO. F. WRIGHT."

I got these telegrams from Mr. Haldane, as having been received from Mr. Wright. The deed referred to in the telegram was the deed from George F. Wright to me of the land in controversy.

I never received any money from Mr. Wright at all. Mr. Haldane knew about my quitclaiming the property on Broadway to Mr. Lyon. The conveyance to Lyon was made after I had deeded the Iowa property to Wright. Haldane got $10,000 from Lyon for the deed. It was in checks, payable to my order, and I endorsed them over to Haldane. Mr. Haldane has received on the New York enterprise ten thousand dollars from Lyon, and five thousand from McCrae. Haldane owes me between fourteen and fifteen thousand dollars, in round numbers. We have had a settlement, and a schedule is attached to the back of our contract.

(Witness produces contract between him and Haldane, dated May 19, 1892.)

This is the only contract now in force. There was a prior contract, which Mr. Haldane had. The larger portion of the money Mr. Haldane received was used by him for his own private expenses. They always looked enormous to me. Haldane was living pretty high, part of the time, as long as he could get money. He was using all the money he could get for his own private expenses. Mr. Baldwin was in New York several times during the summer of
1889, and Judge Hubbard was also there, in reference to the
122 matter, *i. e.*, the Hopper affair. My offer to Mr. Dull was, to give him my claim against the portion of the lot that belonged to Mr. Lyon. After this conveyance I talked with Mr. Wright, in 1890, and asked him to reconvey the property to me. He wanted four or five thousand dollars before doing it. Since then I have seen him repeatedly, in 1891 and 1892. It seems to me there was some correspondence; I know I talked to Haldane a good many times about it. Haldane agreed to get it back for me, and I de

pended on him up to the time he and I came out here, in October. Mr. Haldane was my agent to get a reconveyance from Wright. I deeded it on his recommendation, and when I didn't get what I expected I was getting, I asked him to get it back, and I figured I would charge him up with the land if I didn't get it. This was immediately after the failure of consideration between myself and Mr. Dull.

Cross-examination:

The reason I deeded the land to Mr. Lyon was the failure on Dull's part to release a mortgage on the land deeded to me. I told Mr. Dull, two or three days before I made the deal, "If you don't release the mortgage so I can handle the land, I will settle with Lyon on my own account, and you can take your land; I have got to have money." Dull said he would do everything he could to release it, but he didn't have the money and didn't know where he could get it. His intention was to have Holcomb release it, and that there was security enough in the balance of the land.

Cross-examination by Mr. BALDWIN:

Mr. Dull knew I had conveyed his land to Mr. Wright. While I was negotiating the settlement with Lyon, part of the
123 time I was acting for Dull, until I told Dull I would settle on my own account.

Redirect:

I have with me the deeds from me to Savage and from Savage to me. At the time I wrote the letter, offering to reconvey the land to Dull, the legal title was in Mr. Wright. I had only the equitable title.

Defendant Dull offers in evidence warranty deed of John E. Blackman and wife to Ezra P. Savage for $15,000, dated October 1, 1889, conveying the property in controversy. Filed September 29, 1890.

Also deed of Ezra P. Savage to John E. Blackman, quitclaiming the property in controversy, dated January 1st, 189[illegible], and acknowledged March 3, 1891, and recorded in Pottawattamie county, Iowa, on the same date, viz., March 30, 1892.

The defendant Dull moves to strike from the record all the testimony of the witness Blackman on cross-examination of Mr. Baldwin and Mr. Duffie, as to conversations with Lyon and Dull; and in reference to negotiations for the purchase of the Broadway interest, as incompetent and immaterial, not proper cross-examination, and for the reason that it is an attempt on the part of the witness Blackman, and of the intervenor Phelan, and defendant Wright, to contradict the express special findings and decree of the supreme court of Westchester county, New York, heretofore offered in evidence.

testified as set out on pages 83-'4-'5-'6-'7-'8-'9-90, *ante*, and in addition thereto, as follows:

I bought 1,384 acres of land in Pottawattamie county, Iowa, of George F. Wright, in 1883, and paid him $23 per acre. I am acquainted with Charles Haldane and John E. Blackman. In May, 1889, they left a card of Wright, Baldwin & Haldane at my office, with Mr. Haldane's name marked, and their downtown address, corner Warren street. The fact that I was acquainted with Mr. Wright, made it a matter of curiosity to me as to what they wanted, and a day or two afterward I called at their office. They made a statement to me in regard to their business; that they represented the Hopper title to the old Bloomingdale road, and they had deeds and were there to represent their interest and affairs, either amicably or by litigation. They said the firm of Wright, Baldwin & Haldane, of which Mr. Wright was a member, was in the deal. At that time I had a lease of a lot running from Broadway to Seventh avenue, along Fifty-first street, a distance of 156 feet, average width 48 feet. Had leased the land for twenty years, and put up a building on it. The Broadway frontage, in dispute, was 41 by 24 feet. They said I was on the disputed ground, and wanted to see me about asserting their title. They supposed I was the owner. For some time afterward we had negotiations, which resulted in me giving them 551 acres of Iowa land for the title to this property in dispute. I executed a deed and Blackman executed a deed to me, which was finally put in Charles Haldane's hands in escrow.

Q. *What, if any, consideration did you ever receive for the conveyance of your Iowa land?*

125 A. *None whatever.*

Q. *To whom was the land conveyed that you were to receive for your Iowa deed by Blackman and Haldane?*

A. *To Mr. Lyon, my landlord.*

This conveyance was made at the time they had agreed and were still agreeing to convey the property to me, and before they had fulfilled their contract, so far as asserting the title was concerned, and delivering to me the property. The Broadway front was conveyed to Lyon, without my knowledge or consent. Haldane knew all about it at the time, and was the first to tell me. About a year or two ago, I had a conversation with Mr. Wright in Council Bluffs; he claimed to have advanced $5,000 to Haldane, for which he was holding the land as security. I had been informed by Blackman and Haldane that they had conveyed the land to Wright for $10,000, to be advanced to them as they might see fit to call for it. They had always told me that they had never received any money at that time or since. *At the time Blackman offered to reconvey the land to me, he had no title to the property.* When I found they had conveyed the property away from under me, I found Haldane, and he wouldn't talk to me, but said Blackman was in the recorder's office, and would tell me what had been done. We went to the office, and I found Blackman there, and each tried to force the other to tell what had been done. Finally Blackman blurted out, "*I have done it*"—*meaning that he had done me up.*

Haldane said he had advised Blackman to do this, but gave no reason for it.

In accordance with Mr. Blackman's letter, I met him and Duffie at the Palmer house, Chicago, in February, 1892. At that interview Blackman said there never had been a time since he
126 committed the act that he didn't regret it, and that he had always intended to make it good. That he was thankful to me, for the time he was imprisoned in Albany, for a similar offense, that I hadn't filled the newspapers with trash in regard to his conduct to me; and that he was ready now to settle with me, and make satisfaction. I asked him what he considered his duty to be towards me, and he said *it was to return to me my land in the condition he found it, and to make me good for all expenses, costs, etc.* Judge Duffie was present at this conversation. *They occupied the same rooms together.* Duffie said that Blackman was trying to persuade him to come to New York and become interested in the matter there in the place of Haldane as attorney; that he would not consent to do so, or have anything to do with any claim upon which there was such a cloud, and that Blackman must settle with me and make entire satisfaction before he would even consider the proposition. *He characterized the New York transaction,* in which Blackman had conveyed the property to Lyon, as "*High swindling.*" *He said it was "high swindling." He knew all about the fact that I had received no consideration for the Iowa land. It was all talked over in a general way.* I don't know whether he was representing Blackman, or himself, at that time, but *think, now, that he was representing himself.*

He didn't tell me — had a $5,500 mortgage on the land, nor that Blackman had conveyed the land to Phelan or Savage; neither did I know anything about it. Mr. Burdick was present during all these conversations. *There was no settlement of any kind effected between me and Mr. Blackman at that time. He didn't make any proposition of settlement further than to return to me my land. He wanted me to act in unison with him in defeating Wright's claim, and then*
127 *he would redeed the land to me, and he agreed to make conveyance immediately on getting the title.*

Mr. Blackman came back with me to New York on the same train. On my return Mr. Blackman represented to me that he owned 25 per cent. of the New York enterprise, and proposed to turn over to me, or sell to me, a certain portion of it to assist him in expenses in carrying on his matter, and about two weeks after we left Chicago we came to some sort of an understanding. But *the result of the whole thing was, there was no settlement ever made. The arrangements and agreements were never fulfilled. He succeeded in getting money from me on these proposed agreements, but I found out that Mr. Blackman's representations were untrue in regard to his interests, and all arrangements were broken off.*

When I saw Wright, a year or two ago, I fully explained to him about the transactions between Blackman and myself, and he fully understood I had received no consideration for this conveyance.

I tried to get my land back, and told him that if he would settle the matter, and turn in and assist me in my rights, that I would

allow him to hold the rents he had already received, and that if I should ever get anything out of the New York deal, that I would allow him dollar for dollar that I received until he had money enough to cover his claim. Wright virtually accepted this proposition, and I supposed the matter was settled when I left Council Bluffs. But he wanted to see Baldwin, who was on his way to Boston, and he reserved the right to speak to Baldwin, as a matter of form, before making the agreement absolute, and agreed to write me as soon as he had seen Baldwin. Afterward, in a letter
128 to Haldane, he refused to carry out the agreement, but claimed he wanted his money back, about $5,000.

Cross-examination:

The only portion of the land I had a lease upon, that was controverted, was 41 feet on Broadway, and 24 feet on Fifty-first street. *The deed was placed in escrow*, and the mortgage was placed in my hands, and *there was an understanding that it should not be placed on record.* My lease had a clause in it that at the end of ten years it might be taken in for $22,000, with a percentage off. I was paying $4,000 yearly, land rent. If I could have got this strip it would have improved my condition there.

And that was entirely my business with Blackman and Haldane, to obtain it. *I held the mortgage* on the Broadway strip from Blackman, *under an agreement between us.* I told my landlord I had it in my power to settle the whole business; told him I was in a position to settle the claim, and I thought that was all right. And *while I was having these negotiations with Lyon, Blackman sold out to him without my knowledge, and received $10,000 from him for the conveyance.* I didn't consider I was under any obligation to tell Lyon about the conveyances that had been executed on the strip. I didn't have any conversations with Wright in regard to the transaction, because I looked upon him as one of the parties to it. I might have placed the mortgage of record, but *it would have been in violation of my agreement with Haldane and Blackman. I was not to place it on record only for my protection against bad faith of Haldane and Blackman. The mortgage was merely a guaranty, a protection against bad faith—and only to protect myself against their bad faith, had I a*
129 *right to put it on record.*

Q. *But you didn't see any bad faith?*

A. *No, sir; it came so suddenly, I hadn't time; that is what all that means.*

I knew when I went to Chicago that Blackman had practised a fraud on me, but went there to arrange for a settlement. *We made none in Chicago*, but went back to New York together. There was sort of a memorandum of an agreement made as to a portion of the Broadway strip, and I paid him some money under an arrangement—pending an arrangement and signing of a contract. I don't know whether I have any security from Mr. Haldane, or not, for advancements made to him. *I have been bumped around in this thing until I don't know just where I am.* I never made any representa-

tions to Mr. Lyon as to who had the title to the strip. I was negotiating with him to sell the title, an intermediary, as it were. It is pretty hard to tell what one's office is, when you are doing business with that kind of people. My negotiations were to sell out the building and the piece of land with it. The value of the strip was put in at $10,000. What I wanted to get was the cost of my building, which had cost me $45,000, and I offered him the building at $35,000. I tried very hard to settle with him for that. Mr. Burdick, a friend of mine, from Chicago, was boarding at the Palmer house, at Chicago, at the time of my meeting with Blackman.

Q. *Do you swear that Judge Duffie said this transaction was high swindling?*

A. *I do, sir; absolutely.*

Duffie knew all about the matter, and Blackman's side of the case. He seemed to be very familiar with it. Duffie said nothing to
130 me about having a mortgage, while in Chicago. I said he was there in his own interest, and *based my opinion on the condition of the deal since then.* I never asked Duffie at that time, if I could enforce my mortgage on the Lyon property, neither did I ask or seek his advice, nor did I ask him the effect of the quitclaim deed, nor how I could protect my interests under the mortgage on the New York strip. *I swear, positively, I didn't talk to him at all about that, nor did I ever talk about employing him to come and help me enforce it. I never told Duffie, before he left Chicago, that Blackman and I had made a settlement or an understanding, or that we would fix the matter up in New York—not one word of truth in the whole business. I didn't tell Judge Duffie anything of the kind, because it was not true.* I asked Judge Duffie what he thought of Blackman's conduct, on the lower floor of the Palmer house, near the elevator, and his answer to my question was, that "*it was high swindling.*"

Duffie came into the room where Blackman and I were, and volunteered the opinion that as my landlord had taken a quitclaim deed his title would not be good only as against Blackman's interest, and he thought it should be set aside, and that he would voluntarily go to New York and attempt to set it aside and take nothing for his pay unless he succeeded. That was the end of the conversation, so far as I know. *I didn't ask him for any opinion,* nor did I make him any offer to go to New York. *Blackman and I had this talk, that he was to restore to me my Iowa land; that I should act in unison with him. He had already brought suit against Mr. Wright, as stated.* I knew nothing of the other claims. *He wanted me to work in unison with him, and as soon as the deed was cancelled to Wright he would restore the land to me, redeed it and make me good for all damages I had been to through his dealings.*

131 *Afterwards,* he said he was hard up, and said something about money matters, and wanted me to take some interest in the New York enterprise, and wanted me to advance some money to assist him in carrying along the enterprise in this other matter. But that was all—that was as far as that went. Blackman has got two or three thousand dollars in money out of me since the Chicago meeting but *it was under no definite arrangement or agreement.*

The only understanding when we left Chicago was, that we were to act in unison as against Wright, in obtaining back my Iowa land. I was willing to do what I could to get back my land. That was my sole object. I supposed Blackman was a good enough man to work with, like that, but I *didn't find it that way; I thought that was the best method to get possession of my land. I went back to New York with him, but never made any contract with him.* We had some verbal understandings, but they were not based upon any facts. In the matter of unison against Wright, so far as I was concerned, it didn't represent very much, there was very little for me to do. *I took this method of getting possession of my land.*

Redirect:

My explanation of the arrangement with my landlord is simply this: There was a party started a building, and failed; I made arrangements to buy out the creditors; met at the landlord's to settle the matter, and there was a clause in the lease they had, that I objected to, and which these people promised to remove, and that was to take the property in at the end of ten or fifteen years. The landlord was a very peculiar man—a good deal of a crank, and
132 was having trouble with his wife about a separation, and she was in the office to sign this lease, and he was very obstinate, and when we came to that point of removing that clause he could not be handled. His attorney could not approach him; he was ugly—very much worried, and rather than have the whole matter break up, which we had been weeks in getting together, his attorney said to me: "Mr. Dull, my landlord, wants this property earning money; he don't care anything about this clause; you see he is cranky and fretful, and we can do nothing with him today. Now, it is either to get together or break it up today, and I will give you my word, as his attorney, that if you will sign this lease in this way, it shall never be taken advantage of." The result was, I signed the lease finally. I had an estimate of what the building would cost, which was about $20,000 to $25,000, and it was put in the lease that the amount should be $22,000, that he was to pay for it, and that gave him the privilege, in ten or fifteen years of taking in the building, provided he didn't honor his attorney's guaranty. The building cost me more than $40,000. The amount of money in the building was an inducement to my landlord to not comply with what I desired. I wanted him to take the clause out, as agreed, or buy the building, which I offered him for $35,000, which is probably $7,000 less than it cost, or give me some evidence that he would not trouble me at the end of ten or fifteen years. He wouldn't do it, and before I closed the deal with Blackman I did everything I could to persuade him to do as I wanted. I closed the deal with Blackman, believing I would be able to turn over this land and the building to my landlord and then get my money out. *It was suggested by Haldane and Blackman* that I might operate as a medium and assist in the settlement, and I did more or less in representing their claim to my landlord in the way of persuading him to buy
133 and take the whole business off my hands and leave me out. I didn't attempt to sell the strip, it was the whole business—

building and land. I closed the deal with Blackman, with the understanding that the matter should not be made public on account of my position, and the mortgage was not to be put on record, but was given as evidence of good faith.

I agreed to deliver the Iowa land to Mr. Blackman, free of encumbrance. *He was informed in the beginning all about the mortgage.* When they got into trouble with Wright, it proved to me Blackman had no money. He represented he had $12,000 in money and western land. Said he had $2,000 in the bank, and three days after he wanted to borrow $250 for expenses. Blackman never intimated to me that he had any idea of making a deal for himself and Lyon; *the deal with Lyon was a thunderbolt to me. I haven't recovered from it yet.* After I discovered the doings of this "pair," I was somewhat dazed. I sought legal advice, and was told that if I got the deed cancelled on the ground of no consideration, there would be trouble in getting rid of Mr. Wright's deed, for the failure of the consideration was after the transaction with Mr. Wright.

I was advised to arrest them and put them in jail; also, that in case I brought the action to cancel the deed before any negotiations in regard to the property had been made, that the subsequent claims would rest upon Blackman's claim, which was a fraud. If I did it the other way, I might have trouble to cancel Blackman's deed, and a judgment would be no good against him. Mr. Blackman's condition, financially, was pretty low at that time. I didn't discover evidence of the fraudulent representations made to me by Blackman until immediately prior to the commencement of this suit in New York, and I brought suit forthwith—immediately.

134 I went into the deal *relying a great deal upon Mr. Wright. I thought a man in his position and connected with the affair, as it was said he was, that it was a guaranty I would be treated right. And I had confidence that Mr. Wright would not get away with the land; that he would not really attempt it, and that in some way, further on, I would get what was due me.*

I also relied upon the mortgage upon the Iowa land, and encumbrances and conveyances as being a protection and notice to other parties. I didn't think that Blackman was in a position where he could do anything with the land. I thought *his position was such that anything he could do would be done in bad faith by anybody who would take hold of it with him,* and it seemed to me, *the property was in a position where it could not be well meddled with by anybody in good faith.*

And after I found they were doing these things, I made a deed of the property to my wife. After I went down East, Blackman had given a man named Townsend a mortgage for $250. Townsend was a lawyer, and found out that Blackman didn't own the land, and was "going for him;" and Blackman came to me to go on his bond for this $250, when the man held a mortgage on my land for the same amount, and I didn't know it, and *I had to pay the bond.* After I left Chicago for New York, I never made any agreement of settlement with Mr. Blackman as to waiving my right to the Iowa land. *The recovery of that was foremost always, I wouldn't have given*

the land for all that Blackman possessed in New York; wouldn't begin to do it.

The negotiations we had in New York, *afterward*, was for
135 money to be *advanced* by me to Blackman. He represented he owned 25 per cent. of the whole enterprise, and on this representation he got money from me. He represented that he would execute agreements to do so, and *these moneys were all advanced before any agreement was ever executed or completed. I think I may have had to pay Blackman's fare from Chicago, but I never paid him any money on any executed agreement or contract that I ever signed with him or Haldane in New York city, after I was in Chicago, and there was no*
1 *agreement or contract ever executed.*

Blackman was needing money very much, and was in serious trouble with Haldane. Haldane had given a note of $1,000 to a lewd woman of the town, and Mr. Blackman had endorsed it, and this woman had sued Blackman for the thousand dollars, and there was going to be a grand expose. I didn't know that Blackman was afraid of an expose on his own account, yet he was wonderfully anxious to settle the suit.

"Now," he says, "if you will turn into this thing and assist me to settle up these difficulties with Haldane and get this suit withdrawn, I will make an even divide of my interest with you, and whatever the settlement is with Haldane, half of it shall be yours."

I got the suit withdrawn, and labored between Haldane and Blackman some two months to get a settlement of their interests, and one day Haldane said to me, "Mr. Dull, I can't talk frankly with you until you get through with Blackman." I said, "It looks as though I am through with Blackman." "Well," he said, "Blackman and I settled our difficulties and signed a contract twenty days ago." *That ended my connection with Mr. Blackman. I had advanced him over $2,000. "Yes," Haldane said, says he, "we got together,*
136 *and Blackman said, "Damn it, Charley, if there is anything to be given up, I would rather give it up to you; Dull will cut me out." And then Haldane said to Blackman, "You have had Dull a long time, and got a good lot of money out of him, let me 'pull his leg' a while.'"*

Haldane told me at one time this—says he: "*Baldwin is howling about not getting any money out of this steal, I call it—of course you know, and he wants to know when and where and how he is coming in; but he says, 'Wright sits back quietly and collects the rents, and says, 'Boys, I don't see how the devil we are going to hold that New York property and this land out here, and beat Dull out of the whole of it.*" That's what Haldane told me. *After these developments I dropped them, and commenced this action.* Blackman, in the meantime, had amended his petition in Iowa, and made me a defendant, and endeavored to get service by publication. I was only informed of it through a friend. *I have been after them ever since, and have prosecuted both cases vigorously.*

There were three or four memorandums or contracts prepared for me to sign, but *I never signed any of them. There was nothing com-*

pleted or reduced to writing; it was merely a scheme to get money from me.

I have nothing to show from Blackman, except *unexecuted memoranda;* it was nothing but "*rainbow chasing.*"

In Chicago, Duffie was there, as I took it, fixing up Mr. Blackman's interest. The only unison of work between myself and Blackman was in the lawsuit against Wright. I had no other interest, and it was for the sole purpose to enable me to recover my land; *only so far as to get him to help to cancel the deed to Mr.*
137 *Wright. There never was any agreement, understanding or talk at any time, either at Chicago or subsequent thereto, either in the presence of Judge Duffie or Blackman, or either of them, that I waived my right to the Iowa land. I considered the Iowa land worth a great deal more than all the rest, for that was certain, and the other was not. These other matters were to aid him in the New York deal for a money consideration. There is no sense in saying that I in any manner waived my right to the Iowa land. That is purely manufactured, every bit of it.*

Recross-examination:

It would make no difference to me whether Mr. Lyon should hear in regard to my New York transactions. It is something I would not care anything about, one way or the other. *I never go into a transaction that I don't think is right; that my conscience don't tell me is straight.*

What I mean was, I told Lyon I was in a position to turn the property over to him in case of settlement. The "pair," referred to in my testimony, is Blackman and Haldane. *The fact that Blackman settled with Lyon, and took money from him for property conveyed to me, probably comes under the head of fraud; at least I thought so.*

(Witness is shown a memorandum, Ex. 2.)

It is not a copy of any memorandum or arrangement with Blackman. The memorandum was in Mr. Blackman's own handwriting, and was written up according to his understanding. I never paid but little attention to it.

Blackman represented that he owned 25 per cent. interest in the New York enterprise. He and Haldane had difficulties,
138 which they settled between themselves. *After that I had nothing more to do with them.*

Redirect:

Mr. Haldane furnished the information as to the representations of Blackman at the time. He brought me the evidence so I could bring the action. Mr. Keogh was my attorney; Mr. Haldane did not appear. *None of the transactions, after I left Chicago, in the spring of 1892, had anything to do in connection with the Iowa land—had no connection with it whatever.* Haldane told me that Blackman said that "*he wanted to know if he couldn't work that land deal into this memorandum as a settlement of the Iowa land.*" *Haldane said to him:*

"Does he say anything about it?" *"No."* *"Well, then, of course you can't do it."* He says: *"Mr. Dull understands I am to redeed him that land, but I have not said for how much, and winked his eye."* After I left Chicago there was no understanding, agreement or arrangement, whereby I waived my right to the Iowa land, nor was there any memorandum ever completed or executed, or any agreement made, either between myself and Blackman, that had any relation to the relinquishment whatever of that land. Nor was there any arrangement, memoranda or contract ever made or completed between myself and Haldane, or Blackman, in reference to that land *The only arrangement was, that Mr. Blackman was to redeed to me that land as quick as he could cancel the deed to Mr. Wright, and he had a lawsuit then pending to do that. And all these other transactions, which I have testified to on Mr. Baldwin's cross-examination, proved to be schemes to get money out of me, and were finally dropped when I found what they were.*

139 The defendant Dull moves to strike out all the cross-examination of himself, as to transactions had by Blackman and Haldane with him subsequent to the spring of 1892, as immaterial and hearsay, and having no bearing upon the issues in this case.

A. C. BURDICK

Have lived in Chicago for the last twenty years; dealer in grain and contractor. Am acquainted with Daniel Dull, and met him with Duffie and Blackman at the Palmer house in Chicago, in February, 1892, where I was boarding at the time. *I was present when they talked over the fraud and failure of consideration in regard to the New York property. It was talked over in the presence of Mr. Duffie.* Duffie said he hoped that Mr. Dull and Blackman would succeed in settling their affair over this land matter; would come to some satisfactory arrangement, and if they did so, that he would probably take part in this New York affair. But if it was not settled up he said he didn't care to have anything to do with it. The *the* conversation first occurred in the lobby of the Palmer house as to the Blackman transaction, and Mr. Dull says I asked Duffie what he thought of the transaction, and Duffie said: *"I don't know what it is in your country, but in our country we call it high swindling."*

Duffie acquiesced in what Mr. Dull had said, and was willing to have it go in that way, that he regarded it as high swindling. In the last conversation, Duffie said that he would probably go to New York and take part in the New York deal. My understanding was *that no arrangements had been made of their matters, but they hoped there might be when they got to New York. They arrived at no agree-*
140 *ment or understanding about the matter, but simply talked it over.* During a conversation in regard to the New York matter, I intimated to Mr. Blackman that it looked to me it would be for his interest to settle this matter up in some way. *That it looked to me as if he was criminally liable.*

Mr. Duffie said to me, that Dull and Blackman were talking over

their matters, and that "*he hoped that Mr. Dull would get his land back.*"

Blackman expressed himself as having done wrong; that he had wronged Mr. Dull grossly, and he seemed to be penitent and willing to cure the wrong, as far as possible, in regard to this land. *He offered to do all that was in his power to do, to see that Mr. Dull got the title of his land back again.* I intimated to him that he had done wrong, and at the same time spoke of his being criminally liable, and he said that *he expected Mr. Dull would get his land back.* I insisted to Mr. Dull that it looked to me a good deal, from past experience and what I knew of some other matters, that this was merely a scheme to get more money. I said, "It is money, money, and I would not be surprised if demand is made upon you before you leave Chicago, and the proper thing to do, if any arrangement was made, was to have it made now, and reduce it to writing. *The only thing they talked of while Duffie was there, was this fraud that had been committed on Mr. Dull by Mr. Blackman, and the arrangement was made to go to New York and adjust matters there, and Judge Duffie knew of it.* The final arrangements, if any, were to be made in New York. *There isn't the least doubt in my mind that Duffie knew of it. I have no doubt that Duffie understood that he was acting with Blackman, and was his assistant attorney, to help adjust matters with Mr. Dull.*

141 Cross-examination:

I heard the New York transaction talked over with Mr. Dull, and knew all about it before. They might have had conversations I didn't hear. I have only told what I heard when I was there. I had heard of the New York transaction, and *looked upon it as a crime, and so expressed myself to Blackman, and that it was for his interest to settle with Mr. Dull.*

Defendant Dull on behalf of his answer and cross-petition, offers stipulation as to the evidence of Charles Haldane, as follows:

(After title of the case at bar.)

The substituted plaintiff and intervenor, Ed. Phelan, consents that the certified copy of the testimony of Chas. Haldane given on the trial of the case of Daniel Dull *vs.* John E. Blackman *et al.*, in the supreme court of New York, Westchester county, *may be read as the testimony of the said Charles Haldane, on the trial of this cause;* the same to have the like effect, as if the deposition of said Haldane were taken, or if he were personally present to testify, saving, however, to said plaintiff, and intervenor, all legal objections to said evidence, excepting the objections that said testimony is not in the form of deposition, or that the witness is not personally present to testify, which said objections are hereby waived.

Dated May 31st, 1893.

E. R. DUFFIE,
Attorney for Ed. Phelan.

142 Defendant Dull offers in evidence the testimony of Charles Haldane, in accordance with the above stipulation, as set out on pages 90 to 95, *ante*.

Defendant Dull offers in evidence deed of Daniel Dull to Nellie M. Dull, dated September 22, 1892, and recorded September 26th, 1892.

Also contract between Blackman and Charles Haldane, dated May 19th, 1892, with the schedule of indebtedness thereto annexed.

Defendant Dull moves to strike from the record the testimony of Phelan, Blackman and Duffie as to the alleged agreement relating to the conveyance of the land in controversy, and the changing of a warranty deed into a mortgage, as incompetent, immaterial, irrelevant, hearsay and not the best evidence.

F. J. DAY.

Real-estate dealer, Council Bluffs—12 years. Am acquainted with rental values and value of real property in this county. Am acquainted with the Dull land. In the summer of 1889 it was worth $35.00 per acre. At the present time, $40.00 an acre. Between 1889 and the present time it has varied between these values. The rental value of the cultivated land for the last four years was $3.50 per acre, pasture land $2 per acre.

Cross-examination:

The land in controversy was all improved more or less; fenced and broken up. Some of this land is the finest bottom land on Mosquito creek; some of it is in the hills.

143 Defendant Dull offers in evidence record of mortgage of George F. Wright and wife to A. W. Askwith, on the property in controversy, for $5,000, due in one year. Dated November 16th, 1891, and recorded December 7th, 1891.

It is admitted of record that there has been no assignment made of record, of the mortgage from George F. Wright for $5,000 to A. W. Askwith.

Defendants Daniel Dull and wife rests.

Intervenor's Rebuttal.

MATILDA U. WHARTON.

Reside in Loup City, Neb.; 15 years. Am one of the heirs of the Hopper estate, and have been in New York two years on this business. Knew Mr. Blackman at Loup City, and it was through me he became connected with the prosecution of the Hopper claim. Know Haldane. In 1888 and 1889 Mr. Haldane was attorney for Mr. Blackman. I knew it by his being at Mr. Blackman's office on business.

Cross-examination:

I came from Loup City here to testify, at Mr. Duffie and Blackman's request.

Intervenor offers in evidence "Exhibit No. 5," as follows:

J. E. Blackman & Co., Star auction, sale and boarding stable. Auction sale every Saturday. Gentle driving horses a specialty. Cor. 20th and Izard streets, Omaha, Neb.

NEW YORK CITY, *June 14th*, 1888.

FRIEND DUFFIE: I arrived here on June 1st. Should have
144 written you before, but have been waiting to gather all the facts I could before doing so. I have seen Stryker, the man on the cemetery. He sent me to his lawyer, Col. George Bliss, *who ordered me out of his office, but I did not go until I had said what I went to say.* I am satisfied that Stryker knows his title is not good. I have been over to Jersey City looking up the salt meadows. I borrowed from a clerk in the register's office, the record of the case of Jas. S. Mott *vs.* N. Y. O. & W. R'y Co. I am having a copy of it made, and will send it to you. I have investigated this matter far enough to satisfy myself that there is a big thing here, and I think you and I can dig it out. What bothers me most is how to get at all the heirs. I must find them, and make some arrangements with each one. I met quite a number of them at Peekskill the other day. Some of them are all right, and some are cranks. Now, Judge, if you will meet me here at the earliest date possible, I will go over the ground with you, and you can examine the records for yourself. If you agree with me that this title is all right I will proceed at once to find the heirs and make contracts with each one of them. I don't yet know, of course, what share I will get from them, but as to Mrs. Wharton and *and* her friends I will get one-half after deducting all costs and expenses. I believe I can make a like arrangement with each one of them, and I assure you I will find them if they can be found. I will give you one-half of what I get out of the whole thing for your services, and you to pay out of your half for the services of any attorney you may employ to help you. And you must agree not to employ any one not agreeable to me. In other words, you do all the legal work and get half I get, and you pay your own expenses and I will pay mine. I will take care of court costs. If I can't make this kind of an arrangement with you, I think I can with Charles Haldane of Council
145 Bluffs, and if you don't want it, I will come back and see him. Now, Judge, if you conclude to come down and look it over, and don't find things as I tell you, I will repay you what you are out on the trip. Let me hear from you at once.

Address me at 447 W. 18th St., New York city. Care of F. A. Sheldon.

Sincerely yours, J. E. BLACKMAN.

On the margin of the letter is the following:

"NEW YORK CITY, *Aug.* 10, 1888.

The above-recited proposition shall be understood to mean that Duffie is to have a one-half interest in all property acquired by Blackman from the Hopper heirs.

J. E. BLACKMAN."

Defendant Dull objects to the above exhibit as incompetent and immaterial.

GEORGE F. WRIGHT.

Haldane went to New York as Blackman's attorney in the Hopper heir estate.

Cross-examination:

Personally I never knew of Haldane being admitted to practice in New York. The last time I saw Haldane was in Chicago, *when we were arranging for a conveyance of Mr. Dull's property.*

GEORGE F. WRIGHT.

Am acquainted with the rental value of the Dull land. The rental value for 1890, 1891 and 1892—plow land, $3 per
146 acre; pasture land, $1. I have received as total rental of the land, during the time I have had it, $2,742 and $201.80 taxes, leaving as net rental in my hands, $2,540.20.

Cross-examination:

I paid the taxes of 1889 and 1890, and *we got into difficulty about the land, and was not getting along very satisfactorily with the other parties, so I just quit paying taxes.*

Recalled again by intervenor:

Mr. Dull made the proposition of settlement, he has stated, between us, but was not accepted.

Cross-examination:

There was a proposition made to me by him, but it was not accepted. I counted in the rents in this case, and *I wanted my money and interest, less the rent.* Mr. Dull made me the proposition, but I wanted my money and interest, and what I had paid out for taxes. I told Dull I would consider it, and could not accept it at all if Mr. Baldwin refused to give up the balance of the property, as I held the property to secure myself and the balance of the firm, and I afterwards wrote a letter refusing his proposition.

JOHN E. BLACKMAN.

I instigated the investigation of the Hopper title. The starting point was the laying out of the Bloomingdale road in 1703, which remained a common highway until 1847, when it was widened to 77 feet and became one of the streets of the city of New York. In
1869 the legislature provided for the widening and straight-
147 ening of Broadway, and, among other things, that if any part of the road should be discontinued, the abutting property-owners should have the right to acquire it by paying to the city chamberlain the amount found due, etc.

The road was straightened and widened, and a strip was thrown out to the east, and discontinued a short distance, perhaps 20 or 30 feet from above Fiftieth street, on Broadway, to Fifty-fourth street. A claim was made that the title to the discontinued portion of Broadway was still in the heirs of John Hopper.

(Here follows the genealogy of the Hopper heirs, all of which is objected to by defendant Dull as immaterial and not rebuttal.)

Mr. Dull knew all about the title, and the opinion of the different lawyers, including Governor Hoadley, as to the validity of the claim.

All the papers, showing each heir and their share, were sent to Mr. Dull before the conveyance. I never pretended to tell him the percentage, because I was unable to figure it—the shares were of such different size. Mr. Dull asked me a great many time- what per cent. I thought I had, and my answer always was, that I never figured the percentage; that I had the *pro rata* shares, and he could figure it himself.

Some of the percentages were the $\frac{1}{2000}$ part. At the time of my negotiations with Mr. Dull I could not tell or figure up what per cent. I had. I never tried to figure up, never pretended to; don't know as I could have figured it at all. Don't think Mr. Haldane attempted to figure it. Dull gave me a warranty deed to the Pottawattamie County land. I gave a mortgage and executed
148 a deed, and gave it to Mr. Haldane. I became acquainted with Mr. Dull, first, with the idea of his becoming my agent to make a settlement with Mr. Lyon, but he wanted to figure in such a way that he could get the benefit of forcing his landlord to reform the lease.

The negotiations were principally between Haldane and Mr. Dull. Mr. Dull was requested to see Lyon, and tell him about the claim, after he had investigated it himself; then he would come back and report to us. I think it was about the 1st of November when I conveyed the property to Lyon. I heard that Mr. Dull afterwards went to Europe. Mr. Dull *asked* me for a conveyance of the Iowa land, *he never demanded it.* The next time I saw him was in Chicago, at the Palmer house. Judge Duffie and I roomed together. Mr. Burdick was there, and assumed very important airs, and began to ask me questions which I thought *very leading*, and I wouldn't answer all of them. I have no recollection of his telling me I was a criminal. I think Judge Duffie gave an opinion with reference to the deed being a quitclaim that Dull's mortgage might be enforced, *but it is very indistinct in reference to that.* Dull said he would like to enforce that if he could get that deed. I told Dull I would like to have him furnish money for the New York deal, and I could give such an interest that he could get his pay for his land, and that all matters between him and I would be settled up and fixed.

Q. *I want you to come down to what arrangement, if any, you made with him.*

Q. *Well, Mr. Dull came to no understanding that we could reduce to writing while in Chicago.*

We talked about it, and the talk was to the effect that Dull
149 was to take some interest in the New York property, by paying a certain amount of money to assist in running the matter. I told Dull I had been West, negotiating for the sale of an interest in the New York enterprise; that I had a 12½ per cent. interest I could sell and dispose of. Before leaving Chicago, Dull told me we would go to New York and arrange matters, and when the araangement was made, that *I was to return and dispose of his land for him as his agent*, and the money received for it was to be paid to Mr. Holcomb in releasing the mortgage. It was talked about that I was to sell him an interest in the entire New York deal—a certain per cent. of the whole thing for a consideration. When we got to New York I told him he would have to get possession of the deed, the deed which had been placed in escrow with Mr. Haldane, of the strip. Our interest in the New York enterprise was worth eight or ten millions, or nothing. Dull said it was worth that, if it was worth anything. "Exhibit 2" is a memorandum showing the arrangement between Dull and I. It is a *copy of a copy*, which I have compared. The other I gave to Mr. Dull. Before this memorandum was made he had probably paid me $60 or $70, and *I had told him what my necessities were; that I must make arrangements with some one;* and, probably on the same day, he gave me some drafts *to pay some debts*, at White Plains, in conformity to this contract—about $200. He said there was a change he wanted to place at the bottom. *He kept the memorandum and it was never made.* I kept on getting money from him, with *the accounts he paid for me*—I suppose about $2,100. Mr. Haldane copied this memorandum from the original that I had. Dull was to have one-fifth. I had 25 per cent. to sell—12½ per cent. to Governor Hoadley as attorney fees, Haldane 12½ per cent., and 50 per cent. went to the heirs, under my contract.

But there was a dispute between Haldane and I as to the
150 percentage. We employed the firm of Hoadley, Lauterbeck & Johnson, and made arrangements to prosecute this suit to a termination. The cemetery case was tried, and being lost, an appeal was taken to the supreme court. The Lyle case had been tried and lost and appealed to the general term, and from there we had appealed to the court of appeals.

Hoadley was substituted for Haldane. The case of Blackman *vs.* Lyle is an ejectment case, in which I am plaintiff. It is now pending in the court of appeals. *Dull stopped paying me anything about June 1, 1892, and refused to pay me anything further.* He never asked me to have this memorandum cancelled. *Haldane and I were not on good terms. We did not "speak as we passed by," only, "of course, a little sideways."* Dull wanted to get possession of his deed, he said, to make Lyon fix his contract. I searched and couldn't find it. I suggested that Mr. Haldane would make an affidavit. He showed me a blank memorandum of an affidavit, which he said Haldane would swear to, and I prepared some changes in it, and gave it to Mr. Dull. The case of Blackman *vs.* Rilley, is one of the Hopper cases, and has been argued in the court of appeals, and is now under consideration. The cases have been commenced against all parties

in possession. The cemetery case has been tried in two courts, and is now on appeal to the court of appeals. *Got beaten in every case,* but we are not discouraged.

Have not seen Haldane, to do business with him, since June, 1892. I don't remember telling Haldane that I agreed to convey Dull his Iowa land, but had not said for how much. I might have winked. Here is a bond executed by Daniel Dull, for the purpose of obtaining time for four months from the 1st of April, for
151 the payment of money due from me to Mr. Townsend. Don't know whether it has ever been paid or not. I never told Dull I had 84 or 86 per cent. of the Hopper estate, nor I never told Haldane that Dull thought he was getting 86 per cent. "Exhibit 10" is a letter handed me by Governor Hoadley, which he said he received through the mails from Mr. Dull.

Intervenor offers in evidence extract from letter, "Exhibit 10," to Governor Hoadley, as follows:

"The property that he turned over to you as security to you, he gave nothing for, I understand, and the money he got from my landlord, Lyon, he knows that it was I made it possible for him to get it; otherwise, Lyon, like the rest, would have paid him nothing."

Letter objected to as incompetent and immaterial, and being only a part of the letter.

Cross-examination:

Haldane was not my attorney in the suit of Dull *vs.* Blackman, in New York. I brought this letter of Mr. Dull's to Governor Hoadley, with me from New York. I have not been subpœnaed in this case; have been here about seven weeks, *at Mr. Duffie's request.* Was in consultation, yesterday, with Mr. Baldwin and Judge Duffie, in Mr. Wright's office, about this case. Have been counseling and advising with them, and *furnishing them what documentary evidence they required.* This, "Exhibit 2," in Haldane's handwriting, was furnished by me. I have paid my own expenses and board. Have been stopping with Judge Duffie, in Omaha, part of the time. This case is what has detained me here for seven weeks. I got this
152 letter from Governor Hoadley. This memorandum, "Exhibit 2," was never signed by Mr. Dull. *Dull concluded he would not sign it.* I don't know of any other memorandum I prepared for Dull to sign. I was living with a poor, old widow woman—Mrs. Dorling; had rented a part of her house, and she was importuning me for money to pay the interest on a mortgage, which was about to be foreclosed. I didn't have the money, and got Mr. Dull to advance it for her. I was indebted to her about $2,500, on balance of account. I could not raise the money, and got Mr. Dull to pay the interest on the mortgage to prevent it being foreclosed. He gave me, for her, about $220. I think he went to the bank and paid the interest himself on the mortgage—went and paid the old woman's interest. He never paid me the $1,500, provided in the

memorandum. Then, he was to pay the Townsend matter before March, 1892; *this was a mortgage I had given on his land in Iowa, to get money to go West. Then I mortgaged it to Phelan to get money to go East again.*

Don't know whether the Townsend matter had been paid. *It was my obligation.* Dull did-'t know that Townsend had a mortgage on his property; *I didn't tell him—it was none of his business. Dull never paid me any money voluntarily. I asked him for it.*

"Exhibit 2" is dated May, 1892. I think the original was drawn in February, 1892. Haldane had the original, when he drew it, and Mr. Haldane drew this from a copy he had. Mr. Dull said he was using this cloud upon his landlord's title, to close the whole thing up at once, and he was using the circumstances to arrange a settlement between him and his landlord of the difficulty that existed between them. *That is all there was in it, as far as I know.*

There was no cheating or defrauding his landlord about it;
153 *he was merely trying to compel his landlord to fix up what he had agreed to do by his attorney, he said. And while these negotiations were pending, I gave Mr. Lyon a quitclaim deed of the property.*

We first asked Lyon $15,000, and finally discounted it to $10,000 cash to save the trouble of making proofs, etc. *This was the first money we got from the deal, I guess.*

Q. *You wanted money awful bad, didn't you?*

A. *Sometimes.*

I offered to reconvey the title to Mr. Dull, but he paid no attention to me. I had the equitable title, and I supposed Mr. Wright would give the property up without any trouble. Mr. Haldane said if I would convey to Dull, Mr. Wright would give me a deed. I didn't say anything about this in my letter to Dull. The way Duffie and I met in Chicago, *he and I had a deal pending*, either in New York or Omaha. I explained to him about the deal between me and Mr. Dull. He knew I had given Lyon a deed, and that I had given Mr. Dull a mortgage.

I advised with him about it. Duffie was waiting to see if I made made any arrangement with Dull; if not, we were going back to Omaha, to continue arrangements started there. Didn't hear Duffie call the transaction high swindling. He may have said, perhaps, that I had better make some arrangements with Dull. I do not recollect whether Duffie said he would not go on to New York, or have anything to do with the deal there until I settled with Mr. Dull.

Q. *Do you swear you didn't say so?*

A. *No, sir.*

I thought if Dull would furnish some more money, and
154 take an interest in the New York deal, down there, *so there would be a mutual understanding between us again*, and by so doing lift the mortgage so I could handle this land, *I thought I had better take him in*, instead of the syndicate Mr. Duffie had.

Q. *Do you say you didn't offer to return Mr. Dull's land, there in Chicago?*

A. *It may be I told him.*

I never admitted that I had done wrong; *it didn't turn out as I expected.* Our scheme was to get him to lift the Holcomb mortgage, and sell the land, and take an interest in the New York scheme.

Q. *What right did you have to the land?*

A. *I had a warranty deed.*

He had released all his right to the land by giving a warranty deed, and he had received a mortgage on the New York property for it, and *if he didn't get the New York property it was his own fault.* We got $10,000 for a quitclaim deed of it.

Q. Did you sell it, subject to the mortgage?

A. We quitclaimed it.

We didn't put any mortgage in the deed *A man would have to take his chances.* I cannot explain why I never thought of this point in the trial in New York. I probably wasn't asked the question. Don't know whether I ever made such a claim in the pleadings or evidence in the case of Dull *vs.* Blackman, in New York.

155 Q. *Did you ever make any settlement with Mr. Dull when you left Chicago?*

A. *No, sir.*

(Witness is asked to examine "Exhibit 12.")

I think Mr. Haldane gave this to me. I think Mr. Haldane drew it, *at my request.* It was prepared for Mr. Dull to sign; if Mr. Dull wanted to sign it he could. It is a memorandum of an agreement *to be* entered into at some other time.

The following clause in "Exhibit 12" is read to witness:

"Whereas, the said Dull, with the consent of said Blackman, is about to go to Council Bluffs, Iowa, for the purpose of inducing one George F. Wright to release a certain pretended claim held by him against certain lands in Pottawattamie county, Iowa, the legal title to which is in said Blackman, it is understood that if it shall become necessary, that the said Dull is authorized to agree with said Wright for and in behalf of said Blackman, that said Blackman will assign to said Wright, by good and sufficient instrument of writing, not to exceed 2½ per cent. of his interest in said (New York) property, as a consideration for such release. And said Blackman agrees, in that event, upon being notified that said Wright will accept such assignment, to make, execute and deliver the same."

I remember all about this; it was talked between us to get this unjust claim of Wright's off the land. This had nothing to do with Dull's waiver to the Iowa land. *He waived it when he signed the warranty deed.*

156 *I think Dull ought to follow the consideration.* After we left Chicago there was never any written agreement signed between us. *I had succeeded in getting about $2,500 out of Dull through what was called "understandings."* I think, possibly, *I suggested to Mr. Dull,* after he came back from Chicago, that *he had better get the deed from Haldane that had been left in escrow*—that it might help

in making a favorable settlement with his landlord. I drew a draft of an affidavit for Haldane to sign, and gave it to Mr. Dull. Don't know whether anything was ever done about this matter between him and his landlord. I won't swear but what *I suggested this thing to him.* Dull wanted more than he had agreed to take under the contract; he wanted it for nothing, and *wanted me to pay him back money I had.* A great many contingencies of that kind were put on afterwards.

Q. *He then dropped the whole matter?*

A. *He stopped paying me money; that was the worst of it at that time.*

I have no recollection of any conversation with Haldane in regard to these memoranda, prepared for signature, and I don't recollect of telling Haldane "that if *I would be bound by it, be damned if I would do it.*"

Q. *You swear that didn't occur?*

A. *I couldn't tell you; we used to have "gin fizzes," occasionally.*

All the suits in regard to this New York property have been decided adversely to us. We have not got enough out of it to pay our running expenses. Have been in the auctioneer business for some time. Don't know what Haldane has been doing.

157 Q. *Did Duffie know you hadn't come to an arrangement, in Chicago?*

A. *He knew it was partially settled. Told him would let him know when I got back to New York.*

He knew there was nothing definitely settled, I suppose. I swore, in my answer, that an absolute settlement was made in Chicago; but it was just talk and understanding that we would arrange it in New York.

I was in jail forty-nine days, at Albany, on a criminal charge, and was finally released on bail.

E. R. DUFFIE.

Have been eight years a judge of the fourteenth judicial circuit of Iowa. The letter from Mr. Blackman, in June, 1888, is the first written evidence of my employment. I was in New York the summer of 1888. Some time in 1890, I think, Baldwin informed him that I was going to claim an interest in the land, and we settled our affairs by agreeing that he was to pay me $5,000 for what I had done. As I was leaving the hotel for the train, in February, 1892, in Chicago, *after* seeing Dull, Blackman told me he had deeded the land to Phelan, and got some money. In January, 1892, Blackman came to Omaha, wishing to sell a 12½ per cent. interest in the New York scheme, to raise money. I was called to New York, and when I got back to Chicago, I met Blackman there. He told me he had telegraphed or written Dull. Dull seemed quite anxious about his New York property, and asked my opinion. I told Mr. Dull that the law generally was, that the man who took by a quitclaim deed was not a *bona fide* purchaser, and I thought he could either

158 enforce his mortgage, or *after the title was established* enforce his deed, and that whatever the law might be, that if Lyon

had knowledge of the purchase of the property from Blackman, prior to taking his deed, that all his rights could be preserved. I was there two days, and *don't think this was referred to again. I don't know what "high swindling" is.* Dull asked me, two or three times, what I thought was the legal effect of Mr. Blackman's actions, in selling the land to Lyon after having deeded it to him. *I told him I was a friend of Blackman's,* and that he ought not to press me for an opinion upon it; but, *on the last day* he pressed me so hard, that I said to him, as near as I can remember, that I didn't know what their statute was down there, but if he could show that Blackman had sold this land to Lyon, after the sale to him, for the purpose of cheating him out of his property, that *he could make a case of criminal fraud out of it.* The complaint Dull made to me was, that after he had bought the land, and deeded this 551 acres in controversy, to Mr. Blackman, he had afterwards sold it to Mr. Lyon, his landlord. Dull said he always thought Blackman would make the matter right some time.

Both Blackman and Dull stated to me that they had arrived at an "*understanding.*" After that I came home, and corresponded with Blackman until some time in June, when I ceased to get letters from him. I then went to Phelan and told him that I preferred to have him secure my claim in the form of a mortgage; that Blackman and I had agreed on $5,000, as a settlement, and I was going to add $500 more to that for the other services. The mortgage was executed on this 551 acres of land in controversy, in August. In September, 1892, Blackman came out, and I wanted him to ratify Phelan's act in making the mortgage, and he did so, and I executed to him a receipt. Blackman had come out to try the
159 case, and then, it being postponed, wanted to sell the land. *Phelan was quite a dealer in land,* and we first tried to arrange Wright's claim. I said to Blackman that *Phelan was an old client and friend of mine,* and I would go out and look at the land, and ascertain about its value. I ascertained there was no trouble with the title, except the Holcomb mortgage, and a mortgage held by the Seabrook National bank, and a contract of sale was finally drawn up between Blackman and Phelan and me.

Cross-examination:

My business with Mr. Blackman terminated some time in 1888. I was there the greater part of the summer of 1888; merely looked up the title. There was no claim settled, nor any title to the property exchanged, while I was there. The contract merely called for a certain interest in the land, and it was changed to a money consideration, I think, in 1890. I never took Mr. Blackman's note for the amount. We just lumped it off. He afterwards employed Haldane. I might say, here, that *I was dissipating at the time somewhat,* and he thought, perhaps, he had better get Haldane. That was two years after I had done the work. I had never seen him or heard from him, and never demanded it of him for two years afterward. *In fact, I never asked him to pay it. I think that was his own*

proposition. When he came out, in January, he said if he could remove the liens from the land and dispose of it, I should have pay out of the lands. In January, 1892, he came out to employ me to help negotiate an interest in the "New York enterprise" to Judge Connor, Phelan and others. This 12½ per cent. he had to hypothecate for money.

In Chicago I told Blackman I thought he ought to fix this matter up with Dull, and *Blackman even told me that Governor Hoadley told him the same thing.* We talked over these grievances
160 of Mr. Dull with Blackman—that he hadn't received any consideration for his land, etc. It was all talked over. *I understood the whole situation fully.* Dull didn't ask me as an attorney—didn't employ me. *Mr. Dull felt that he had been an injured man, and felt very indignant at the way Blackman had used him. I told Blackman he ought to fix it up.*

I recollect of Mr. Dull asking Blackman what he thought he ought to do to make him whole, and *Blackman said he thought he ought to settle it up with him so that he would get full pay for his land and all his trouble, and make him whole.* The inference from the conversation was, that *Dull was there to get something from Blackman.* Mr. Blackman was very indignant against Mr. Wright respecting the conveyance of the land; that he had paid nothing for it, and that suit had to be brought to set aside the Wright conveyance.

Blackman and Dull went out several times by themselves, and told me only in a general way what the understanding was. I couldn't tell what was said. I asked to have them reduce their settlement to writing; they said they would go to New York and get their attorneys to. *They didn't tell me the details of any settlement.* I knew at that time Blackman had no money to make a settlement with; and I knew there was no money paid at the time. I didn't know at this time that Blackman had given a mortgage to Phelan nor a deed until we went to the train. He said, then, he had borrowed a little money of Phelan, and *he would as soon that Phelan held the title as himself.* There was a good deal said between Mr. Dull and Blackman, in Chicago, that I didn't hear. *I know that the burden of Mr. Dull's complaint was that he had been defrauded out of his land. I think Mr. Burdick, in a general way, has testified*
161 *to what occurred there, except as to going for Mr. Blackman*—that was not in my presence.

I told Dull that if Blackman had made this conveyance to Lyon, with intent to cheat him out of that property, *it was a criminal fraud,* or words to that effect. I did not know what the statute of New York was about it.

After all this conversation in Chicago, I returned to Omaha, and corresponded with Blackman, and then the correspondence suddenly ceased; and then I went to Phelan, in August, and demanded a mortgage to secure Blackman's debt of $5,500. I afterwards appeared as attorney for both Phelan and Blackman in this suit. I verified Blackman's petition and the amended petition, and Phelan's petition of intervention. I can't explain how it is that *on the 13th of October* I swore that Blackman was the absolute and unquali-

fied owner of the property, and *on the 17th of September, prior*, I had sworn that Phelan was the absolute and unqualified owner. I was afraid Phelan didn't have any authority to make a mortgage to me, so I had Blackman ratify it. This contract (October 6, 1892) is the first time that Phelan assumed to pay my indebtedness or the indebtedness of Savage, or any other obligation. I knew the mortgage to Askwith was on the property—that Wright had the title to the property. We spoke about making out a new deed, but I said they would have to have a contract, and might as well embody it in this contract. *Mr. Phelan was not ready to pay for the land fully at the time.* By this contract the mortgage was metamorphosed into a deed. *I never wrote to Mr. Dull to find out if he had settled with Blackman. I didn't inquire of Mr. Blackman whether he had settled with Mr. Dull; never asked him anything about the matter at all.* I
162 went out to see the land because *I didn't want Phelan, who was a friend of mine, to engage in any trade I couldn't recommend. Phelan signed this contract on my representations. He never saw the land. I didn't tell him anything about Dull and Blackman having trouble about it, and don't think he asked me anything about it.* I have been his attorney for four or five years. I told Phelan about the $10,000 Holcomb mortgage and the Seabrook mortgage. I had the deed from Savage back to Blackman in my possession. Blackman was there the time the conversation was going on, at the time of the contract. I told him the land was worth probably $35 an acre—from $27 to $35 per acre. Phelan figured and said he could safely call it worth $15,000, or a little more—from $15,000 to $20,000. When Blackman came out, at the time of signing the contract, *I didn't ask him how matters stood between him and Dull, that I am aware of. I asked him nothing, and he asked me nothing about it. Didn't ask him how he and Mr. Dull were getting along, or whether he had fixed up the deal with Mr. Dull. It seems more like a dream to me, so I don't want to testify positively about it.*

Redirect:

The checks identified by Mr. Phelan (*ante*, page 65), with the exception of the one dated November 29, 1892, and the $75 check all passed through my hands. I know I had the bank telegraph money to New York for Mr. Blackman. I borrowed money on several occasions of Phelan, and the checks dated in August, 1892, I got from him to use in payment of life insurance, and one thing and another, and, *afterwards, by agreement, they were applied upon my fees in this case.* There is another $100 check that is drawn to me as fees in this case—August 15 and August 30; that would be $220; then October 3rd he paid me $100.

163 Recross:

The check of August 30, 1892, and October 3, 1892, for $120 and $100, were not to apply on account of Blackman for Phelan, but on my fees.

The one of $400, dated October 12, 1892—I didn't send all—*only*

$325. Blackman borrowed some money of me, when he was here, and I kept it out of this check. The check, $150, November 29, 1892, went to my son; don't know whether he sent it to Blackman, except as I am informed. *The one of $375 I had telegraphed to him; at that time we both had been served with notice of the suit in New York, and Mr. Dull had already filed his cross-petition, and we had appeared to it*—(Phelan and I); the same when the check of April 1, 1893, for $50, was sent. *The check of March 23, 1893, was not paid to him, but applied upon my fees in this case.* I was attorney for both Blackman and Phelan, and the party with whom this business was done. Blackman has made my office his headquarters. I have consulted with him as counsel, and he has an interest in the result of this suit, unless, as my son has told me, a man named Kridler has bought his interest in the contract, and that a mortgage has been left with him to send for record.

The defendant, Dull, moves to strike from the record all the testimony of the witness Blackman as to the genealogy of the Hopper family and his transactions therewith, and his interest therein; also all his negotiations with the heirs, and the percentages and transactions with the heirs, and conversations with Governor Hoadley, and statements as to communication between Lyon and himself, and of conversations with Haldane and various other parties, for the reason that same is incompetent, immaterial and hearsay.

164 Intervenor, George F. Wright, *et al.* rest.

Defendant Dull's Rebuttal.

DANIEL DULL.

After I left Chicago, the first money I paid to Blackman was *railroad fare* in the depot at Baltimore. When we figured up I had paid him $60, to meet his necessities. *I never paid him any money, only as his necessities demanded it.* Mrs. Dorling was an old widow lady, seventy years old. She had been an invalid thirty years, and had a small interest in the Hopper-heir claim. Blackman said he owed her $2,000; that he had gotten charge of her affairs, and had "put the money on a mortgage in the West at 10 per cent.," and was paying her 8 per cent., and that it was necessary for him to meet her immediate wants, and that he wanted some money to make provision for one of his children, up in the country somewhere, and I paid Mrs. Dorling's interest, and this tuition fee, *to meet his urgent necessities. I have never seen the memorandum, "Exhibit 2," before, until now.* He had sent me this memorandum, "Exhibit 12." There was serious trouble between him and Haldane, and I tried to get matters fixed up between them, until they had their settlement, May 18, 1892. Mr. Blackman came to me with this memorandum, "Exhibit 12," very hard pressed for money; he brought it to me personally, and asked me to sign it, and I refused. He received from me a note for $500 at that time. Mr. Haldane afterwards returned "Exhibit 12" to me. This $500 note was to

take care of some debt he had downtown, which, he said, amounted to $365. I gave him this note of $500 to be cashed and return me the $135. He left with the memorandum and the note, and *I never got any of the money. This note was simply money advanced to meet his necessities. That was the last money I ever paid him.*

165 *There never was any executed agreement between us. There was nothing said in Chicago when Duffie and Blackman were present, that I waived my right to reclaim the land I had been beaten out of. Nothing was said that the largest imagination could construe in any such direction. My land was the essential feature of the whole business. The New York deal was in that kind of shape—so much parleying around about it, etc., that I didn't look upon it as a matter of any value, and the only reason I consented to advance any money on an interest there, was to so shape matters that I could get possession of this land; otherwise I would have had nothing to do with it whatever. The mortgage I got on the property in New York was by agreement between us, withheld from record, as a guaranty of good faith. I trusted them and didn't place it of record.*

I never had any idea of attempting to assert that title in any way against my landlord, because I didn't want to engage in that kind of a mix-up. I couldn't see my way clear to do it. Mr. Blackman proposed to me to get the deed that had been deposited in escrow with Haldane. He said "it would put me in shape so a little pressure could be brought to bear with it." He said "he had visited Haldane's office nights and Sundays," when Haldane was away, and couldn't find it. Nothing was ever done about this at all; simply a little talk in that direction—nothing passed.

I would like to state, for the benefit of my landlord, that he has passed the ten years and made me no trouble, and is going along very nicely. In my letter to Governor Hoadley, the phrase, "Help Blackman to get the money from Mr. Lyon," means that my being

166 in the position I was with my landlord, and taking the steps I did, placed Blackman in a position where it was possible for him to go and sell the claim; *otherwise my landlord would have done as all the rest of the people did on the line—do nothing in the way of settlement, money, or anything else.*

Cross-examination:

I paid Blackman money for the purpose of getting back my land. I paid him to get him along; I didn't know but what I would have to adopt him further on.

I paid him to meet his urgent necessities, and waited for something to turn up.

Letter to Governor Hoadley, as follows:

EXHIBIT I.

Daniel Dull, Broadway, 51st street and 7th avenue.

NEW YORK, *Dec. 15th*, 1892.

Hon. Geo. Hoadly, 120 Broadway, city.

DEAR SIR: Mr. Haldane has mentioned to me the fact that *Blackman has, through you, requested that he—Haldane—try and persuade me to take no further steps against Blackman.*

I assume that you have not been made aware of all the facts, or have been misled as to the true condition, otherwise you would not have identified yourself in such a way with the matter.

In the beginning he obtained, from me, a deed of my land,
167 through misrepresentations, for had he told me the truth I would not, under any circumstances, have been persuaded to deal with him, but I gave him a deed, and agreed to give him possession the first of the coming year, the deed being dated June 25th.

He deceived me as to the amount of interest he owned, also as to his financial condition, as he claimed to own a much larger percentage than he then, or ever has, possessed; he also claimed to have property and plenty of money to prosecute his suits to a termination; while the facts soon proved to be that he had neither property nor money, and so far as I can learn, never did have any of either worthy of mention, except what he has gotten hold of by hook or crook in wronging innocent parties, all of which he has spent in supporting his way of living, and at the same time boasts of the rigid economy that his family has been subjected to.

Of course, you fully understand what he did with the interest that he promised me for my land, or so much of it as he held a deed for. You also know that you urged him to return the land to me, and that he promised to do so. Upon his promise to do this, and upon other false pretenses and false representations, he succeeded not long ago in obtaining from me quite a sum of money—between two and three thousand dollars—and when he learned that I had discovered his tricks, deceptions, false representations and unfaithfulness, and the time had come for him to fulfill his obligations, instead of doing so he went West and made another attempt to steal my land, by pretending to sell it to one named Phelan, and he also mortgaged it to one Duffie, a lawyer, for $5,500.00, as fees for helping him to defraud me out of the property.

And last September, Blackman brought suit against me
168 in Council Bluffs, for the above purpose, giving me no notice of the suit, which, fortunately, I learned through others.

He gave one Townshend a mortgage on my land for $250.00, and then had the cheek, when I was assisting him, to ask me to go on his bond for the amount, which I did, not knowing that he had given a mortgage on my land for the identical amount.

Duffie, his lawyer at Council Bluffs, knew all about the land deal. I met both him and Blackman in Chicago, at Blackman's request. Blackman was then figuring with Duffie to bring him into these

New York suits, and was using one of your letters, which he also showed me, as evidence that Haldane would be forced to withdraw from the suits.

Duffie then said he would have nothing to do with the New York suits until Blackman had settled with me, as he would not touch a suit with such a cloud upon it. I asked him the legal construction of Blackman's offense, and he said it was high swindling.

Of course, Blackman was blaming Haldane for persuading him, and in fact, as he put it, Haldane forced him into the act. I think he said more mean things of Haldane than I had ever heard one person say of another.

He said that I must have confidence in himself; that there never was a time he had not regretted the act, and there never was a time that he did not intend to make it good to me, etc., and he was now ready to do so, and besides, give me a show to make some money, as he termed it, while the facts were, he was cunningly planning to beat me again, and also use me to help him defraud Haldane.

169 Although, so far as my money is concerned, I have the largest investment in the matter of any individual, yet *my first interest is to protect myself from being defrauded out of my land*, and I don't know how much you would like me to stand from this person, but I think I have already stood too much, by far, and I have given him so long a time to correct himself, and assisted him to an extent under such circumstances that I don't really wonder he says I am half fool, and that the amount *of* money he could get out of me was measured by what I could command.

I believe you understand the terrible condition he has, by his methods, placed poor old Mrs. Dorling in. It is really distressing to see and hear the old lady tell how he has misled, deceived and robbed her. The only money she depended upon for support, and to pay her taxes and interest, is gone.

Blackman told me that she was worth some $40,000.00, but the real facts are she only has her home, and that is non-productive and worth not to exceed $18,000.00, and this is heavily mortgaged, with nothing to keep up expenses. But in all her troubles there came a twinkle to her eye, and a hearty laugh, when she related the fact that Blackman was unable to sleep with his family nights, in her home (as he said) on account of the *bedbugs*.

His family occupied her house for a time, and as Mrs. Dorling states, only paid a portion of the rent agreed upon. When Blackman was sent to jail, the old lady knowing his family were destitute, sent for them in the goodness of her heart, to come to her home, and cared for them to the best of her ability, and with all her kindness to him he has apparently been giving the knife to this poor

170 old lady, who has been an invalid and helpless for so many years. Therefore, you see he is no respecter of persons in his methods, no matter how feeble or helpless, or great their extremity.

Now, Blackman has virtually made you the instrument to ask Haldane to use his efforts in deterring me from protecting myself

against his perpetrating upon me all sorts of frauds, and as I said in the beginning, that I assume you have not fully realized the situation, otherwise you would not identify yourself with the subject in such a manner.

The last funds I gave Blackman was a note for $500.00, due in ninety days. It was understood that he was to have it cashed downtown by a certain party, which proved to be false, as he had it cashed uptown by another party, and failed to give me that portion of the $500.00 as understood. The portion that he was to retain of the amount was mainly to be used in paying Mrs. Dorling's taxes, of which he only paid one year, and that the year of 1890, there being now two years due.

And of the $500.00, Blackman was to retain $375.00, about—but he got away with it all, and then, I am told, that when the note was due he advised and urged the party and bank to not extend it, or any part of it, under any consideration. This comes under the head of his malicious practices, and is illustrated by a very frequent saying of his, as follows: "Damn them, they must feel my heel a little more." He made use of this expression to me in connection with Haldane a great many times, and I don't think there was any place or person where he thought he could do him injury by malicious statement, that he would not go. At least he told me of numerous places, and added: "Damn him, I will make him feel my heel." And in this instance I presume he told the truth, or did

do as he stated, as it was in keeping with his methods.

171 Condemning Haldane on the woman question was a hobby with Blackman, as you know, but he would wind up by saying that his own family was first, last and all the time. This is the only virtue that he succeeded in making me believe that he possessed, and when I later on learned to my entire satisfaction that he did not even possess this one, I told him that the only virtue I gave him credit for I was then satisfied he did not possess, but he, of course, denied everything in the strongest manner. I told him that I did not positively know such to be true, but I certainly believed it all true.

I have lately been informed that he is not sleeping at home nights, therefore the supposition is that he is continuing the same methods.

I mention all these matters, as it is only fair to yourself, myself, and all others, Blackman included, that it be known what his methods are, as I am satisfied from expressions you have made to me that you believed Haldane the root of all the evil, and that Blackman was an innocent lamb who had fallen into bad company.

If I did not think that Blackman is about the man I picture him, I would not say so, for I do not think any one is justified in misrepresenting, and besides, I never believed it paid to do so, and if there is any one who thinks well of Blackman I do not know who it is, unless it be yourself, as you are the only person that I have ever known to speak well of him. He came from the West seemingly an adventurer, without any apparent financial, social or

moral responsibility, and has developed such methods, seemingly, as I have placed before you. He evidently has more or less ability in the searching of titles, but his main success seems to be,
172 to use a vulgar expression, in laying for "suckers," a fact that you may be able, with others, to realize a little further on.

What he wants of you now is to protect and assist him in defrauding others, and if you fail in this he will consider you are no friend of his, which is no more inconsistent than for him to take the position that those who object to his unscrup-lous methods are abusing him and deserve to feel his heel.

Blackman had, no doubt, as I am told, one of the best mothers, who wrote him such letters as only such a mother could write to so undeserving a son. He has boasted of showing those letters to unprotected women in order to gain their confidence, in obtaining their deeds, and then tell how he intended to defraud them by wearing them out through delays, etc., and then buy them up for a song.

In bringing suit to protect myself against his attack, I did so in Westchester in order not to publish his methods here as to this act. I also served an injunction upon him, restraining him from further operations, etc., in the suit he brought against me in Iowa. Martin J. Keogh, attorney, serving me here.

My attorneys in the West say that I have evidently fallen into the hands of thieves.

I don't know but what it would be as well that all the dogs be at once let loose and wind him up, for he evidently is depending on manipulating this New York deal, and the parties interested, to protect himself and his methods.

I think the above fairly represents both the situation and the individual that we have to contend with. You are welcome to show this to Blackman, if you like, as I have already
173 expressed myself to him on most of the points, and if he had been frank enough to inform you, it would not be necessary for me to do so now, and would have saved you the annoyance of having forwarded to me a message from him that I stop proceedings and allow him to carry out a most unscrup-lous swindle.

A man of your age; position and unblemished character, cannot afford to be misled into believing in his methods, or giving them either sympathy or support, as there is seemingly no substantial evidence in which, so far as I know or have ever heard, that he does, or even intends to do, the correct thing, and to use Haldane's words, I am astonished at the desperate chances he has taken and the positions he has placed himself in, apparently depending upon the enterprise to prevent him from being intercepted and brought to justice.

I have been put to geat inconvenience, loss and expense through Blackman's unscrup-lous acts. I have borne it with patience and forbearance for more than three years, until in a most presumptuous manner he brought suit against me to establish a notorious fraud, apparently an attempt to maliciously make me feel his heel, whether he gets anything of consequence out of the steal, or not.

What explanations he has given to you, I of course, do not know, but on general principles expect he would tell you anything in order to obtain your sympathy, and as I said in the beginning, I assume that you do not understand the conditions, otherwise you would not be instrumental in attempting to stop proceedings upon my part to protect myself from such an individual, and such acts, and you now know why he refused to arbitrate, and upon what was founded the statement made by you, that Blackman felt certain that he was in the right.

174 My present proceedings against Blackman are to have the deed canceled, as having been obtained by him through false representations, fraud, etc., which suit was precipitated at the time by his dastardly act in suing me, and as the ball is opened, and that by himself, he not being satisfied with his former outrages, I shall therefore not cease until justice is in some manner satisfied, as far as can be done, and if it be decided that he will not bring the suits at once, and also show a disposition to do the correct thing, and settle with me in some fair and satisfactory manner, as agreed. In such case, I propose to bring other proceedings against him of even a more serious character than the present, for there is no question but he has been unwise and wicked enough to make his body responsible for his acts.

I have, some time ago, told him this, but he, as I before said, relies upon the enterprise and those connected with it, to protect him in his methods, which is a condition that cannot continue.

I thoroughly realize the unpleasant situation you are placed in, and as to the differences being harmonized between Haldane and Blackman, I think that Haldane has seen so much of Blackman's methods that he is thoroughly afraid to trust him in the least degree.

When they were settling their differences last summer, I was supposed to be in Blackman's confidence fully, and more or less in Haldane's confidence, and Blackman so misled me that I labored between them for some twenty days after they had signed a contract—to bring them together—as I afterwards learned from Haldane. Blackman having denied there being a contract, and

175 wanted Haldane to change the date, that I might not know when it was made. But Blackman, in a boasting way, several times stated to me that he would make no contract with Haldane that was not cold blooded, and if Haldane got the best of him he would find no fault.

He has in the past three years probably spent upon himself more money by several times than he ever before had to spend in the same length of time, and for that money I doubt if there is one instance where it can be shown that he has given a penny or any other valuable consideration in return.

The property he turned over to you as security he gave nothing for, I understand, and the money he got from my landlord, Lyon, he knows that it was I who made it possible for him to get it, otherwise Lyon, like the rest, would have paid him nothing.

You cannot point out where he has earned one dollar, and yet I

am told he has sustained two families nearly all the time since he came to New York. Through McRea, Townshend, Lyon, Mrs. Dorling, myself and others, he has got out of this deal direct, probably $25,000.00 to $30,000.00 in cash, and he claims he holds all his original percentages except the amount due you, and has virtually not invested a dollar of his own money, as he had none to invest. Therefore, it goes without saying, that for him to obtain this amount of money for nothing requires questionable methods, and many of them.

I think this fairly represents the situation, and if there is any mistake in anything I have said, I shall be pleased to correct it, as the truth is certainly sufficient. But I think you will find it all virtually correct, which is certainly a lamentable fact.

176 I beg your pardon for this long letter, but it has seemed necessary under the circumstances, that you understand the situation.

Judging from a report that I received this morning from my attorneys in Iowa, Blackman is violating direct the injunction that was served upon him some thirty days ago, restraining him from further proceedings there.

I enclose you a circular with references attached, and should you desire more, I refer you to any one who may know me.

Yours truly, DANIEL DULL.

Jan. 24th, 1893.—*E. R. Duffie withdraws his appearance for the plaintiff, John E. Blackman, and upon his application is allowed to appear and prosecute the action in the name of the original plaintiff, John E. Blackman, for and in behalf of Ed. Phelan, the intervenor.*

Also memorandum "Exhibit 12, as follows:

EXHIBIT 12.

Memorandum for agreement *to be entered into* between John E. Blackman and Daniel Dull.

Whereas, said Blackman is the owner of certain undivided interests in real property in the city of New York and in Hudson county, New Jersey, which property is wrongfully occupied by sundry persons and corporations, so that said Blackman has commenced and is about to commence suits at law to recover possession of the same,

Whereas, said Blackman has agreed with one George

177 Hoadly to pay him 12½ per cent. of all money or other proceeds of said property when realized in payment for legal services rendered, and to be rendered in and about the prosecution of said Blackman's claims, and

Whereas, said Blackman has also assigned to Charles Haldane five per cent. of the proceeds of the same property when realized, in payment for services rendered by said Haldane, in the same matters, and

Whereas, by the terms of the contracts held by the persons from whom said Blackman obtained his title to said property, said Black-

man is bound to pay to said persons fifty per cent. of the net proceeds of said property, after deducting expenses and disbursements, and

Whereas said Haldane claims to be entitled to his election to continue to remain as attorney, or counselor, for said Blackman in the prosecution of said claims, and to receive therefor the further percentage of, or proportion, of 13¾ per cent., together with one-half of any amounts in which said Blackman may be benefitted by reason of any deduction which he may be entitled to make under his contract with his grantors, before accounting to them for the 50 per cent. net proceeds above mentioned, and

Whereas, the parties hereto are desirous that said Haldane shall relinquish his connection with said suits and his claim to said 13¾ per cent. of the proceeds of said property, but without incurring his animosity or opposition,

It is understood that said Dull is to use his best endeavors to that end, and especially provide for said Haldane some suitable
178 remunerative office in the office of some attorney, or firm of attorneys, in the city of New York, so that he can be kept in a friendly attitude toward the suits, and his assistance be obtained in case of emergency making it necessary.

Now, therefore, it is understood,

1. Said Blackman is authorized to make any terms with, or concessions to said Haldane which he may think prudent, for the purpose of inducing said Haldane to relinquish said 13¾ per cent., except that said Blackman shall not agree to give him any further percentage of said proceeds over and above the said five per cent.

2. Said Blackman is also authorized to treat with said Haldane (in case he still insists that he has a right to be retained as attorney or counsellor) with a view to his employment at the lowest remuneration possible, and to induce him to surrender and relinquish any contract he may now claim to have for such employment, and to offer him any pecuniary inducement for that purpose. But said Dull shall not be bound by any such arrangement, nor to furnish any money for the purpose of effecting it, unless he consents and agrees thereto.

3. When it shall be finally ascertained what the contract relations between said Blackman and said Haldane are, or are to be, then the parties to this agreement are to have a settlement of all pecuniary transactions between them up to that date under an arrangement now existing between them, and they shall then settle definitely, or as definitely as possible, the precise portion of the title of said property remaining undisposed of and controllable by said Blackman, and they shall then enter into a new contract, by the terms of which said Dull shall be entitled to share with said Blackman in the proportion of not less than one-half of the net proceeds of said
179 Blackman's interests, and of all contingent profits and benefits realized by him out of said property in any way, or the proceeds thereof. Until said contract is made, all pecuniary transactions between the parties shall be governed by the arrangement at present existing between them.

4. When said new contract is executed and delivered, said Dull shall be entitled to a mortgage from said Blackman upon the interest in said proceeds acquired by said Dull under such contract, but this clause is subject to the consent and approval of Hon. George Hoadley.

5. *Whereas, said Dull with the consent of said Blackman is about to go to Council Bluffs, Iowa, for the purpose of inducing one George F. Wright to release a pretended claim held by him against certain lands in Pottawattamie county, Iowa, the legal title to which is in said Blackman, it is understood that if it should become necessary, said Dull is authorized to agree with said Wright for and in behalf of said Blackman, that said Blackman will assign to said Wright by a good and sufficient instrument of writing, not exceeding two and one-half per cent. of his interest in said property as a consideration for such release, and said Blackman agrees in that event, upon being notified that said Wright will accept such assignment to him, execute and deliver the same.*

This agreement shall bind the heirs, executors and administrators of the parties.

Witness our hands this — day of June, 1892.

(No signatures.)

180 Defendant Dull offers in evidence certified copies of pleadings of John E. Blackman, in the case of Dull *vs.* Blackman, in the supreme court, Westchester county, New York, as set out on page 109, *ante*.

Also certified copy of the special findings and decree of said court, as shown on page 109, *ante*.

All parties rest.

After all the evidence was in, the defendant, Dull, on the ground that he has *just discovered* additional testimony-in-chief and rebuttal, offers in evidence *contract of settlement between the intervenor, Phelan, and the defendants, Wright, Duffie, et al.*, and states that the said contract has been discovered since the completion of the evidence, said contract showing a complete settlement between all the parties to this litigation, as against Daniel Dull, and that their apparent opposition is merely fictitious, identification being waived.

Said contract being as follows:—

This agreement witnesseth: That, whereas, there is a suit pending in the district court of Pottawattamie county, Iowa, entitled John E. Blackman, plaintiff, *vs.* George F. Wright, *et al.*, defendants, and Ed. Phelan, intervenor, in which the title to $551\frac{6}{90}$ acres of land in said county is involved, it being the same land conveyed by Daniel Dull and wife to John E. Blackman, by warranty deed of date June 25, 1889, and recorded in Book — of Deeds in the recorder's office of said county; and,

Whereas, Ed. Phelan, the intervenor, and George F. Wright,
181 one of the defendants in said suit, both claim title to said land as against the said Daniel Dull, who is also a defendant in said suit, and as against any grantee of the said Dull; and

Whereas, the said Phelan and the said Wright have both agreed in writing to be bound by any settlement or arrangement of the dispute between them relating to said land, which John N. Baldwin, the attorney for said Wright, and E. R. Duffie, the attorney for said Phelan, may arrive at:

Now, therefore, it is agreed by and between the above-mentioned attorneys of the said Wright and the said Phelan, as follows:

1st. The said George F. Wright and his wife shall execute to Edward Phelan a special warranty deed to the land involved in said suit, warranting the title against any and all conveyances of or liens made on said land by himself.

2nd. The said Phelan shall execute to E. R. Duffie a mortgage on said land to secure the payment of the sum of $4,506.58, with 8 per cent. interest from July 15th, 1893, which said mortgage shall be assigned to the said George F. Wright by the said Duffie.

3rd. Both of said instruments shall be placed in the hands of Joseph H. Millard, of Omaha, Nebraska, and by him held in escrow, to be delivered on the happenings of the following events:

4th. If the title to said land shall be decreed to belong to Daniel Dull, or to any one claiming through him, since his conveyance thereof to John E. Blackman, then and in that event said Millard shall deliver the deed of conveyance executed by Wright and
182 wife to said Wright, or his attorney, John N. Baldwin, and the mortgage executed by Phelan and wife to Phelan or to his attorney Duffie.

5th. Should the title to said land be decreed to belong to either the said Wright or the said Phelan, then and in that event the deed executed to said land by Wright and wife to Phelan is to be delivered to said Phelan, or his attorney, Duffie, and the mortgage is to be delivered to said Wright when the time for appeal from such decree has passed with an appeal being taken, or if appeal is taken then on the affirmance of such decree, but should the decree be reversed the mortgage shall be delivered to said Phelan, or his attorney, Duffie.

6th. Should it be decreed, in the suit above mentioned, that Phelan has title, but that George F. Wright, or any one claiming through him, is entitled to a lien on said land for any sum whatever, then and in that event he shall receipt on the proper record of Pottawattamie county payment of such lien in full, and the Phelan mortgage shall then be delivered to said Wright, subject to the conditions hereinbefore set out.

7th. Should it be decreed that the said Phelan has no title, lien or interest in said land, and that the said Wright has simply a lien, then if the lien of the said Wright, so established, does not exceed the sum of $4,506.58, the deed of Wright to Phelan shall be returned to Wright, or his attorney, and the mortgage of Phelan to Duffie returned to Phelan or Duffie.

8th. Should the lien of the said Wright, so established, exceed the sum of $4,506.58, then the said Wright is to pay to the said Phelan the amount over and above the said $4,506.58, after the

same has been collected, the deed and mortgage to be delivered as set forth in article 7th of this agreement.

183 9th. If the court finds the title in Phelan, it must also charge up the payment of the Holcomb mortgage to balance of land covered by it, or said mortgage must in some manner be provided for as not to longer encumber the land in suit, before the title is decreed to be in Phelan, within the meaning of the 5th article of this agreement.

JOHN N. BALDWIN,
Attorney for George F. Wright.
E. R. DUFFIE,
Attorney for Ed. Phelan.

Regarding the rents for the land, if either Wright or Phelan are decreed to own it, Phelan shall have the rents for 1893, and all subsequent years while out of possession on account of the present litigation.

Each party pledges himself to the other that he has not at this time, and will not in the future, compromise or settle his claim to the land with Dull or grantees, without the written consent of the other.

JOHN N. BALDWIN,
Attorney for George F. Wright.
E. R. DUFFIE,
Attorney for Ed. Phelan.

On the 11th day of July, 1893, the defendants, Daniel Dull and wife, filed

Reply

as follows:—

Come now the defendants, Daniel Dull and wife, and for reply to the various answers and amendments to the answers to

184 his cross-petition by Phelan, Duffie and Wright, deny each and every allegation therein contained.

Denies that he ever abandoned any claim to the land in controversy; denies that he agreed to advance certain sums of money in consideration of any interest in the New York scheme, by reason of which he abandoned the property in controversy; denies that he ever made any settlement with Blackman, or entered into any contract for a settlement with him, as to the land in controversy, but alleges and avers the facts as set out in his original cross-petition.

Further replying, this defendant denies that he had knowledge of the fact that the land in controversy was conveyed to George F. Wright for advances made and to be made, to the extent of ten thousand dollars, to one Haldane, to be used in carrying on the New York enterprise; and denies each and every allegation contained in the amendment to the answer to the cross-petition filed by Phelan, Wright and Duffie, herein.

Further replying, this defendant states that the plaintiff and the defendants, Duffie, Phelan and Wright, have conspired together, as in his original cross-petition stated, for the purpose of defrauding him out of the property in controversy; that the alleged adverse

interests of said defendants in the controversy herein are wholly fictitious, and have no actual existence in fact, but that said parties have fully settled and compromised, and divided up the land in controversy as between themselves, and as against this defendant.

Wherefore he prays judgment as in his original cross-petition.

FLICKINGER BROS.,
Attorneys for Daniel Dull.

185 And the foregoing being all the evidence offered, and all the evidence introduced, and all the evidence offered to be introduced, on the trial of this cause, together with the objections and exceptions of the parties thereto, and the rulings of the court thereon, the same on the — day of July, 1893, is taken under advisement by the court, and on the 5th day of May, 1894, the court enters judgment and decree, as follows:

Decree.

And now on this 5th day of May, 1894, it still being of the regular April, 1894, term of the district court of Pottawattamie county, Iowa, this case having heretofore been submitted to the court upon the pleadings, evidence and argument of counsel, and the court having fully considered the cause, and being fully advised in the premises, finds that on the 25th day of June, 1889, the defendant, Daniel Dull, was the owner in fee of the following-described real estate situated in Pottawattamie county, Iowa, viz:

(Here is description of property in controversy.)

And that on said date he conveyed the same to the plaintiff, John E. Blackman, by deed, containing covenants of general warranty — the said Blackman executed and delivered to said Dull the note of the said Blackman for $10,000, secured by mortgage upon a certain parcel of land then claimed by said Blackman, and lying on the southwest corner of Broadway and 51st street, in the city of New York, and also executed and placed in escrow, a deed to the said Broadway property.

That on the 2nd day of August, 1889, the plaintiff herein conveyed the premises first above described to the defendant, George F.
186 Wright, for the purpose of securing to the said Wright the repayment with interest of any and all moneys not exceeding $10,000, which the said Wright might thereafter advance and loan to the said Blackman, but that no money was advanced and loaned to Blackman by said Wright for which he can claim to hold the said premises as security.

That on the 30th day of January, 1892, the said John E. Blackman made and delivered to the intervenor, Ed. Phelan, a deed containing general covenants of warranty conveying the land first above described to the said Phelan, which said deed, however, was intended as a security for the repayment to said Phelan of certain moneys at that time loaned by him to the said Blackman, and as security for the sum of $5,500 due from Blackman to E. R. Duffie, and about $1,000 due from Blackman to one E. P. Savage, and that

afterwards, and on the 14th day of September, 1892, the said Phelan purchased said land from Blackman, and the said deed of January 30, 1892, was to stand as an absolute conveyance of the land from Blackman to Phelan, subject to the claims against the same held by the said Duffie and the said Savage, as above set forth.

That on the — day of February, 1886, the defendant, Daniel Dull, was the owner of all the lands first above described, and a large body of other lands, amounting altogether to about 1,400 acres, and on said date he mortgaged all of said lands to the defendant W. W. Holcomb, to secure a loan of $10,700, due in two years from that date with 6 per cent. interest thereon. That the lands covered by said mortgage are the following, to wit:

(Here is description of 1,384 acres, including land in controversy.)

187 And that the said Daniel Dull was, at the commencement of this action, the owner of all of said lands in said mortgage described, except such as were deeded by him to the plaintiff Blackman on the 25th of June, 1889, and the southeast quarter (S. E. ¼) of southeast quarter (S. E. ¼) of section ten (10) above described, which was sold by Dull in 1889, and by Holcomb released from the lien of his mortgage.

That on the — day of ——, 1889, the plaintiff Blackman sold and conveyed by quitclaim deed the Broadway property in the city of New York, which he had previously mortgaged to the defendant Daniel Dull, and a conveyance of which he had executed and placed in escrow to be delivered to Dull in the future, and upon the happening of certain events in the future.

That since the commencement of this action the defendant, Daniel Dull, conveyed the land in controversy in this action to his wife, Nellie M. Dull.

That in the month of February, 1892, John E. Blackman, the plaintiff herein, and Daniel Dull, one of the defendants, met in the city of Chicago for the purpose of settling the differences and dispute between them, relating to the land in controversy herein, and that a settlement was effected by which the said Dull was to receive an interest in other lands in the city of New York, and also in lands in the State of New Jersey, to which the said Blackman claimed to hold title in whole or in part, and that both of said parties communicated to the defendant Duffie the fact of a settlement having been reached between them, and that he took his mortgage on the land in controversy herein relying thereon, and that said settlement, while not reduced to writing, was acted on by the parties for some time after their return to the city of New York.

188 That the defendant, Daniel Dull, has never at any time returned, or offered to return, to the plaintiff Blackman the note for $10,000 and the mortgage on the piece of land at Broadway and 51st street, in the city of New York, securing the same, nor has he at any time tendered or offered to return the deed placed in escrow for him, or the title conveyed thereby, but still holds and claims the same.

That the matters alleged in the cross-bill of the said Daniel Dull,

filed herein, and the acts of Blackman alleged in said cross-bill to have been in fraud of the rights of said Dull, and for which it is asked that the conveyance of the land first herein described, made by the said Dull to the said Blackman, should be canceled and set aside, were all known to the said Dull shortly after the same occurred and long before the conveyance of said land by Blackman to Phelan was made, or the mortgage to Duffie was executed, notwithstanding which the said Dull took no steps to assert his title to said land, or to annul the conveyance to said Blackman, until the filing of his cross-bill in this case.

Wherefore, it is ordered, adjudged and decreed that in case the defendant W. W. Holcomb shall elect to foreclose his mortgage, he he shall, in that case, satisfy the same out of the lands covered thereby, excepting the lands first herein described, and which were conveyed by the defendant Dull to the plaintiff Blackman on the 25th day of June, 1889, and all other lands covered by said mortgage, excepting the S. E. ¼ of the S. E. ¼ of section 10, township 76, range 42, shall then be first sold and exhausted to satisfy said Holcomb mortgage before any of the lands first herein described shall be subject thereto; and that the lands in controversy herein shall be subject to sale in satisfaction of said Holcomb mortgage
189 only in the event that the other land covered thereby, excepting the forty-acre tract above described, are insufficient to satisfy the same.

It is further ordered, adjudged, and decreed that the conveyance of the lands first herein described, made by the plaintiff John E. Blackman to George F. Wright, and dated August 2, 1889, and the conveyance of Daniel Dull to Nellie Dull, be, and the same are hereby, cancelled and annulled and held for naught, and the recorder of this county is hereby authorized and required to cancel the same of record by notation on the margin of the book wherein said deeds are recorded, and in the index to the deed record of this county reference to this decree and the cancellation of said conveyances by the terms thereof.

It is further ordered, adjudged, and decreed that the mortgage made on said land by the defendant, George F. Wright, to the defendant, A. W. Askwith, be, and the same is hereby, cancelled and held for naught, and the recorder of this county is hereby authorized and directed to note the cancellation thereof in the record where the same is recorded in the records of this county.

It is further ordered, adjudged, and decreed that the title to the lands in controversy here- *and* first described in this decree, be, and the same is hereby, quieted in the intervenor, Ed. Phelan, as against any and all adverse claims held or made thereto by the defendants, George F. Wright, Chillon M. Farrar, John Trefts, Daniel Dull, Nellie Dull, and A. W. Askwith, and that the said intervenor, Ed. Phelan, be, and he is hereby, decreed to be the absolute owner of said land, subject only to the rights of the defendant, W. W.
190 Holcomb, to satisfy his mortgage out of said lands, after exhausting the other lands covered thereby, as above set forth, and such other lands proving insufficient to satisfy the same, sub-

ject also to the mortgage held by E. R. Duffie, and the claim for $1,000 held against the same by E. P. Savage.

It is further ordered that a writ of possession be issued by the clerk of this court, at any time hereafter, upon the demand of the intervenor, Ed. Phelan, and against Daniel Dull and Nellie Dull, or any person claiming by, through, or under them, and that the sheriff of this county is directed to serve said writ and place the said intervenor, Ed. Phelan, in possession of the premises in dispute in this action.

It is further ordered, adjudged, and decreed that all the costs of this action, including the costs of the intervention and costs of cross-petitions, taxed at $—, are taxed three-fourths against the defendants, Daniel Dull and Nellie Dull, and one-fourth to George F. Wright, and that judgment be rendered against the said defendants, Daniel Dull and Nellie Dull, and George F. Wright, for the same, and that execution issue therefor.

To all of which findings and decree the defendants, Daniel Dull and Nellie Dull, object and except.

H. E. DEEMER, *Judge.*

To all of which judgment and decree the defendants, Daniel Dull and wife, at the time duly except, and within six months from the rendition thereof perfect their appeal to the supreme court
191 of Iowa, by having all the evidence therein extended and certified and filed and made a part of the record, and by serving notice of appeal on the plaintiffs and their codefendants & intervenor, as provided by law.

FLICKINGER BROS.,
Attorneys for Daniel Dull and Nellie M. Dull, Appellants.

192 *Index.*

194½ On the 15th day of Oct., 1895, there was filed in the office of the clerk of said court the following denial of appellees' amended abstract:

195 Filed Oct. 15, 1895. C. T. Jones, clerk supreme court.

"In the Supreme Court of Iowa, October Term, 1895.

JOHN E. BLACKMAN, Appellee,
vs.
GEORGE F. WRIGHT *et al.*, ED. PHELAN, Intervenor, Appellee; DANIEL DULL *et al.*, Appellants. } In Equity.

Appeal from Pottawattamie county district court—Hon. H. E. Deemer, judge.

Flickinger Bros., attorneys for appellants.
E. R. Duffie and Wright & Baldwin, attorneys for appellees.

Appellants' Denial of Appellees' Abstract.

196 Denial of appellees' amendment to abstract.

Come now the appellants, and deny the abstract of appellees in the following particulars:

Appellants objected to all the testimony of the witnesses, Wright and Baldwin, as to conversations had with themselves and Haldane, as hearsay and immaterial.

Objections were made to all the testimony of the witness, Blackman, as to the transactions had between Dull and his landlord, Lyon, as incompetent and immaterial, and also as to the cross-examination of Dull on the same matters, for the same reasons and as not being proper cross-examination.

The letter set out on page 11 of appellees' abstract should be dated October 9, *1889*, instead of 1891.

Appellant denies that the evidence of the witnesses as set out therein is correct, but is distorted, and in case of the witness, Dull, the questions of counsel are interpolated as the answers of the witness, and appellants reaffirm and reassert that their abstract heretofore filed contains all the evidence offered and all the evidence introduced, and all the evidence offered to be introduced on the trial of this cause, together with all objections of counsel thereto and the rulings of the court thereon.

FLICKINGER BROS.,
Attorneys for Appellants."

On the 4th day of March, 1895, there was filed in the office of the clerk of said court appellees' amendment to abstract, in the words and figures following, to wit:

197 Filed Mar. 4, 1895, C. T. Jones, clerk supreme court.

In the Supreme Court of Iowa, at May Term, A. D. 1895.

JOHN E. BLACKMAN, Appellee,
vs.
GEORGE F. WRIGHT, A. W. ASKWITH, F. R. DUFFIE, Ed. Phelan, Intervenor, Appellees, and Daniel Dull and Nellie M. Dull, Appellants. } In Equity.

Appeal from Pottawattamie county district court—Hon. H. E. Deemer, judge.

Flickinger Bros., attorneys for appellants.
E. R. Duffie and Wright & Baldwin, attorneys for appellees.

Appellees' Amendment to Abstract.

198 Come now the appellees herein and deny that the appellants' abstract of record herein is a true and correct abstract of all the testimony in the case, and deny that said abstract contains all of the record and all of the evidence used or offered or introduced on the trial of said cause. Appellees state that all offers of testimony made upon the part of the defendants and appellants, Daniel Dull and Nellie M. Dull, as shown by the record, were objected to by the appellees herein, and that the said abstract fails to show the objections noted. Appellees further state that the following additions, changes and corrections should be added and made to the testimony of the witnesses named below, said witnesses testifying as follows, to wit:

(Page numbers in this amendment refer to proper places in appellants' abstract where this omitted testimony belongs.)

Cross-examination — JOHN E. BLACKMAN:

Page 58, 3rd line from bottom, John E. Blackman testified as follows: The other consideration was the amount due Colonel Savage and $5,000 due Mr. Duffie.

Redirect:

Page 60: My recollection is that it was about $1,300.

Cross-examination of EDWARD PHELAN:

199 Page 66, line 16, Edward Phelan testified as follows: I am positive that Blackman got the money. He told me he had.

Cross-examination of E. R. DUFFIE on behalf of defendant Wright:

E. R. Duffie testified as follows:

Page 67: This paper, "Exhibit G" (the bill referred to at bottom of page 52 appellants' abstract) I had at the time we were negotiating for a settlement. That was the amount Phelan agreed to pay as a settlement. Mr. Wright said these would be the figures as a matter of settlement.

JOHN N. BALDWIN

testified as follows:

Page 72, line 2: And he agreed that if he made this deal of this land and if Mr. Wright would advance him $5,000, the land should be taken by Mr. Wright and held as security for the $5,000 advanced and for any further advancements should it be determined in the meantime whether or not it was necessary. This conversation took place in New York. I came back to Council Bluffs and told Mr. Wright of my talk and arrangements and of Mr. Haldane's agreement, and Mr. Wright said, All right, if he has agreed to give me that land when he gets a deed to it, I will advance this $5,000. Mr. Wright got the money at the Council Bluffs savings bank, deposited it in his own name as trustee, and gave me checks as Mr. Haldane would want the money, and I took the money and deposited it to the cre-it of
200 Charles Haldane in the savings bank in Council Bluffs, and between the latter part of March and the 20th or 27th of August after the reception of this deed he (Haldane) received the total sum of $5,116, from the money so advanced by Mr. Wright. There was a delay about getting the deed. Mr. Wright was advancing this money and he went down there and had some negotiations. The deed finally came from Mr. Blackman to Mr. Wright and was delivered and recorded and Mr. Wright was placed in the possession of the land. Haldane got this $5,000 to carry on the business and to keep himself and his family there and to get money for Mr. Blackman and to pay expenses; they were constantly paying expenses for looking up the records and paying others to look up the records, and he said it was costing a good deal of money and they had to have this to carry on the enterprise.

GEORGE F. WRIGHT.

Page 73, line 3: The last of March, 1889, I think, Mr. Baldwin reported to me an interview which he had had with Mr. Haldane, and told me that Haldane and Blackman were about to make a trade with Dull by which they were to get a portion of a farm situated in Pottawattamie county, near Neola, and that Haldane wanted to know if I would be willing to advance $5,000 if they would give me a deed to this land and take the land in possession and sell them out and pay my advancement with interest and the balance realized from the land to be paid over to Mr. Baldwin for the benefit of the New York enterprise. Knowing the valve of the land, I consented to this, and borrowed $5,000 from the savings bank and had
201 it deposited as a special fund for that purpose, and whenever Mr. Baldwin made a requisition on me for a portion of this money for the purpose of carrying on the New York enterprise I gave him a check for the amount asked for, until the whole amount was checked out. I paid the entire amount of $5,000 and this money all went to New York to carry on this enterprise. Mr. Blackman was present in New York at the time of my negotiations or talks with reference to this deed, when I was there to get it. I never had any knowledge whatever that there was any claim of fraud in the

procuring of the deed from Dull, and Mr. Dull made no complaint to me of any kind. Mr. Dull never made any complaint to me and I never had any knowledge, notice or information of any kind or character that Dull made any complaint against Blackman that the latter had circumvented, over-reached or misled him or procured the deed by fraud. Nothing of this kind ever occurred until long after I advanced and paid the money and got my deed. The first I knew of it was when this notice was served in New York. I never appeared in the suit in New York and I never authorized any one to appear for me. The $5,000 that I advanced was to bear 8 per cent. interest. Mr. Dull never made any claim on me for the rents, issues and profits all during the time I collected the same until lately, I mean within the last year. I had rented for the previous years to different persons and collected the rents. Mr. Hubbard was the principal person and tenant on the farm, and I collected from him the rents. I have heard that Hubbard is a brother-in-law of Dull's. Hubbard was always Dull's representative on this land and lived on the land, and I rented a portion of it to Hubbard.

202 Cross-examination:

The question set out at the bottom of page 73, appellants' abstract, was objected to by appellees as incompetent, immaterial, irrelevant, and calling for a legal conclusion.

Stipulation.

The stipulation referred to on page 74 of appellants' abstract was as follows: It is agreed between all parties to this action that the summons, together with a copy of plaintiffs' bill of complaint, or petition, and order of injunction, marked "Exhibit P," was served upon the defendants therein, George F. Wright, A. W. Askwith, Edward Phelan and Edward R. Duffie, not earlier than the 24th day of December, 1892; that said service was made upon the defendants, Phelan and Duffie, by handing them a copy of the summons, bill of complaint and injunction order, in the city of Council Bluffs, Iowa; that neither of the said parties defendant in said bill had any usual place of residence in the State of New York; that neither of said parties were served in any manner in the State of New York or in any manner except as above set forth, and that none of said parties made any appearance in said action, nor did they authorize any one to appear for them in said suit; that the defendant Blackman in that action appeared in said cause and contested it upon its merits, the original plaintiff in this action.

The defendants Wright, Phelan, Duffie and Askwith objected to the summons, complaint and order of injunction set out on
203 pages 75 and following of appellants' abstract, on the ground that the same were incompetent, immaterial and irrelevant and they could not be admitted as evidence against the parties objecting, as it was shown by the records and the testimony and the record made in this case that the said Wright, Phelan, Duffie and Askwith were not before the court, and that the court had no jurisdiction of their

persons or subject-matter of the suit, and any record made of any such proceeding is absolutely void as to said Wright, Phelan, Duffie and Askwith. Defendants also objected to the certified copy, because the same purported to contain the testimony of Blackman and Haldane and these defendants were not present at said trial and did not have an opportunity to cross-examine said witnesses.

JOHN E. BLACKMAN.

Page 120, top: After "John E. Blackman," insert "called by defendants Dull, was examined on part of said defendants by Mr. Flickinger, attorneys for defendants Dull."

Page 122, middle: After "cross-examination," insert "on behalf of plaintiff Blackman by Judge Duffie."

After end of said cross-examination, insert: I gave a quitclaim to Mr. Lyon to the property on Broadway, New York. This property was occupied by Mr. Dull as a tenant of Mr. Lyon. There was a mortgage on the land deeded by Dull to me and I wanted him to release it. We were to attempt to settle with Mr. Lyon. Mr. Dull, of course, being Lyon's tenant, could not be known in the transaction. Mr. Dull, defendant, requested us to go and notify Lyon. Dull would
arrange interviews or go and see Lyon and tell him how good
204 the title was that we had and then upon that basis refuse to pay
any rent to Lyon. Then he would tell Lyon that he would finally have to get this claim from us. That is, of course, he told me that he told Lyon that. I never was present at any of the conversations. Finally Dull told me to go to Lyon and make a proposition to him that I would settle for $20,000, and also tell Mr. Lyon that the best way to arrange the matter was to buy Dull's building at what it was worth. That is the way Dull wanted to arrange matters. Dull wanted me to do this because he said he could not make any arrangement direct with Lyon because he was Lyon's tenant. Dull told me he had leased the property from Lyon for 20 years and that at the time lease was executed Lyon was having some difficulty with his wife on that day and the lease had been drawn up with a view to the termination of the lease at the expiration of a certain number of years—it may have been five or ten—I have forgotten the number; but at any rate there was a limit, and at that time Lyon could terminate the lease by taking the building at $20,000, or if the building cost less than that Dull was to show him the exact value of it, what it cost, and Lyon was to take the building by paying him that amount less a certain percentage for deterioration of the building. I think the foundation of the building had been started before this negotiation for the lease began. At the time the lease was signed Lyon was nervous and having some trouble with his family and Dull requested him to make the limit for the cost of the building larger—that is, up to exactly what it would cost, and Dull
claimed to me that his attorneys had promised to do that and
205 under that promise from Lyon's attorneys he had executed
the lease; that afterwards Lyon would not do that, and after he went on and erected the building, and it cost him about $54,000.

That he had asked Lyon a great many times to reform the lease and arrange it according to the value of the building, and Lyon refused to do so: and now Dull wanted to buy my claim to this corner for the purpose of holding it over Lyon and forcing him to pay full value for the building. That is what Dull told me was his object in trading with me for the land. After I traded him this corner for the Iowa lands he commenced these negotiations. He did not want his landlord to know what he was doing at all, but he (Dull) wanted to reap the benefits. I told Dull I had to have money to run the enterprise in New York. He promised that he would see his friend Holcomb and have the Seaport mortgage released. After quitclaiming to Lyon I offered to reconvey to Dull this Iowa land. I executed a conveyance and handed it to Haldane and instructed him whenever Dull released to him or turned back to him the mortgage which I gave to Dull at the time, to give this deed. I made this mortgage on this property under the statutes of New York. Mr. Haldane told me that while I could not lawfully make him a deed, I could make him a mortgage for the consideration we had set on the land, to wit, $10,000, and I did so, and delivered it to Dull, and a deed had been executed and placed in escrow. He had statements of the Hopper title and other papers of mine during these negotiations, and I placed this deed in Haldane's hands and requested him to deliver it to Dull whenever he turned over the papers, and I then wrote Dull to that effect. I dictated the letter and then signed it. This is a copy:

206 "261 BROADWAY, NEW YORK, *Oct.* 9, 1891.

Daniel Dull, Esq., New York city.

DEAR SIR: I have delivered to Mr. Haldane deed conveying back to you the Iowa land. While I am under no obligation-, legal obligations, to redeliver this title to you, yet I prefer to do so, especially as it has never been valuable to me for any purpose.

If, therefore, you give to Mr. Haldane the other papers that came into your possession relating to this matter, he will deliver the deed to you.

Yours truly, J. E. BLACKMAN."

Dull never delivered me back the mortgage or the deed in escrow or the papers relating to the title, and he never offered to return them to me.

Page 123, top, add to cross-examination by Mr. Baldwin: Prior to the time I had this conversation with Dull I was acting for Dull. At the time I was acting under instructions from Daniel Dull to negotiate a settlement with Lyon, he (Dull) had a mortgage from me to that very same property for $10,000. At the time I was acting under instructions from Dull to settle with Lyon, and at the time of these different conversations Lyon did not know that Dull in fact had a mortgage on this land. Dull told me he did not want Lyon to know it, and I was instructed by Dull not to

207 say a word to Lyon about Dull having this mortgage. Mr. Lyon had a right, under the contract between him and Dull,

to take this building at $20,000 at the termination of the lease. The object of Dull in negotiating with Lyon was to get this property from Lyon because of his right to exercise the option under the lease of taking the building at a less value than what it was really worth, and it was for these reasons that Dull told me to keep still about the fact that he had a lease on this property and not to tell Lyon of any negotiations whatever that I had with him. Dull told me this repeatedly. Lyon did not live on this property in New York, but Dull did. I never saw Lyon and Dull together. Dull told me he would go to Lyon and scare him and frighten him about the title and refuse to pay him his rent and force Lyon to come to me and make the trade so that he could get the benefit of it. Dull said his plan was to refuse to pay the rent on the ground; that he could claim that my title to Lyon's lot in New York was better than Lyon's own title. Mr. Dull had many interviews with Haldane and myself and Mr. Lamason, attorney, with reference to the Hopper claim. I gave Mr. Dull a mortgage for $10,000 on this Lyon Broadway property, upon which he, Dull, had a lease, in consideration of Dull's conveying to me this Iowa land in controversy We knew that the Broadway property was worth more than $10,000, but we agreed to that deal, and when I gave him this mortgage for $10,000 he gave me the deed. When I settled with Lyon I gave him a quitclaim deed. Dull gave me a warranty deed.

208 DANIEL DULL

testified as follows:

Page 128, top, cross-examination of Daniel Dull by Mr. Baldwin, after the word "cross-examination," add: My wife and I deeded to Mr. Blackman in June, 1889, 551 acres of this land in controversy in Pottawattamie county, Iowa. There were two mortgages on said land, although practically there was only one; that was the Holcomb mortgage for $10,000, no part of which has been paid. At the time of this conveyance Blackman gave to me a mortgage upon the strip of land in New York, formerly belonging to Lyon and upon which I had my building. He also put a deed in escrow. The mortgage and deed were part of the same transaction. Irrespective of the Hopper claim the title to this New York land was in Mr. Lyon, who was my landlord, and I had been in possession under a lease from him for a number of years. I never disputed up to this time the title of Mr. Lyon to this property. This property was about 41 feet on Broadway, New York, and about 24 feet on 51st street.

Page 128, line 15: If I had obtained the title to the Lyon frontage, I would have been in a very nice position to dictate terms to Mr. Lyon. All I had to do with Blackman and Haldane was to procure the title to this frontage of land so that I could dictate to Lyon, and that was entirely my business with them, and no other consideration moved me. When I made this exchange of properties, giving my land in Pottawattamie county for the mortgage on
209 this New York strip, I deemed that I was getting value received. I gave them the deed to the Iowa land and delivered

it outright to them without any agreement about an escrow, and no agreement that it should be kept off the record. I ascertained Mr. Wright had a conveyance to this land from Blackman in August, 1889. I had a consultation with Haldane and Blackman in New York with reference to that conveyance. After I knew Mr. Wright had the conveyance to the land, I still held the mortgage on the Broadway strip. Between June and August, 1889, I was negotiating a settlement with Lyon. I was the person who instituted and instigated and directed the arrangements and negotiations for that settlement with Lyon. I reported to Haldane and Blackman what I did. I was carrying on negotiations between Lyon, my landlord, and Blackman and Haldane, for a settlement of the claim that Blackman and Haldane as representatives of the Hopper heirs were making against the property. I was endeavoring to persuade Mr. Lyon to make a settlement with Blackman and Haldane of the claim they were making against the property. I used to report to them what Lyon would say and I would report to Lyon what Blackman and Haldane would say. I carried on the negotiations almost exclusively and entirely. All during these negotiations thus carried on by me and through June until August, all this time I had this mortgage on this Lyon property, and I never told Lyon that I had this mortgage on this property. I did not tell him I had a mortgage on this property from the very same people I was trying to get him to pay damages to to settle.

210 Page 128, line 20: Do not believe that Mr. Lyon, my landlord, would have paid $10,000 cash to Blackman and Haldane to settle the claim against his property, if he had known that I had a mortgage on it for $10,000.

Page 128, line 22: I knew in August, 1889, of this conveyance to George F. Wright. I knew that the title had been conveyed to him. I never told Lyon of the fact of the conveyance of the Iowa property as a part of the exchange for the New York strip to Mr. Wright. I did not tell A. M. Lyon one thing about these conveyances to me and about the mortgage and the conveyance to Mr. Wright until after Lyon had paid his money to Blackman on this strip. I knew of the delivery of this deed to Mr. Wright in 1889. I knew of the delivery of the possession of the land in 1889. I knew he was in possession in 1890. I heard that he collected the rents in 1890 and 1892. I did not pay any of the taxes, and from the time of the delivery to Mr. Wright of this deed in 1889, when I first knew of it, up until July, 1890, I never said one word to Mr. Wright about this transaction, and I never complained to him about the transaction or that Blackman had no right to deed to him. If I had been able to get the Broadway strip, I would not have cared anything about the Iowa land. I testified before Judge Dykman that I could have put this mortgage on the Broadway property on record at any time that I chose to do so, and it was given to me as a guarantee of good faith, and whenever I saw fit to protect myself from what I thought was bad faith I was at liberty to put the mortgage on record. I had that mortgage as a protection

against bad faith. In case I saw bad faith I had a right to protect myself.

211 Page 129, line 3: I knew in August, 1889, that Blackman had conveyed the property and that he could not reconvey it to me. I did not have to wait until the Lyon conveyance of October, 1889, to know that Blackman could not reconvey to me because he had already conveyed to Mr. Wright. I knew that Blackman had parted with the title and I knew that it was past his power to reconvey to me. This I knew of course still in October, 1889, when Blackman conveyed to Lyon and put it still further beyond his power to reconvey to me. I never said anything to Mr. Wright in 1889 about this transaction. I never told Wright that the consideration had failed and that I did not want him to collect the rents, issues and profits, and with knowledge of the failure of the consideration in his deed in 1889, I permitted him to collect the rents for 1890, 1891 and 1892, and I never brought suit to set aside this conveyance until 1893. When I found out about this conveyance to Wright I tried to get Blackman to tell, and he would not tell, and I tried to get Haldane to tell, and he would not, and finally I got them together and Mr. Haldane said, "I won't tell," and Mr. Blackman said, "I won't tell," and finally Haldane said, "You must tell," and Blackman blurted out, "I have done it;" and that was when I ascertained the fraud, and it was in October or November, 1889. I never asked Haldane whether he advised Blackman to do this. After Blackman deeded to Wright, but before he deeded to Lyon, I knew that Blackman was financially irresponsible. The letter from Blackman written to me to come to Chicago was in 1892, and I went to Chicago. I went there in accordance with this

212 request. Before I got there I knew he had conveyed the property in New York; that he had conveyed the Iowa property to Wright and the New York property to Lyon, and I knew the consideration had failed, and I considered he had practised a fraud on me.

Page 129, line 7: After all these trials and difficulties and frauds that I ascertained that Blackman had practiced on me, still in 1892 I again accepted his representations that he had 25 per cent. of the Hopper tract and entered into a new agreement with him and paid about $3,000 on the agreement. So that after I had ascertained that this man was a "high swindler," had perpetrated a grievous fraud upon me, had misrepresented matters to me and got me to make conveyances, I then entered into new negotiations with him and paid him money.

Page 130, line 2: It is simply my opinion that Judge Duffie came there for his own interest.

Page 130, 6th line from bottom: After I had this conversation in Chicago and after I had been apprised of all the conduct of Blackman and after I had received the opinion of Judge Duffie that Blackman's conduct was "high swindling," I had a talk with Blackman about entering into new negotiations and we were to work in unison together and bring suit against Wright to set aside the conveyance, and since that time I paid Blackman between two and

three thousand dollars, and I paid this money after the Chicago talk and after we were in Chicago together and after we went to
213 New York. I went into partnership with Mr. Blackman and we were to act in harmony together and we virtually allied ourselves together. It was not a Siamese-twin transaction, however. After I knew that Blackman was a "high swindler" and after I knew that he had perpetrated a fraud on me, still I went into partnership with him to beat Wright out of his interest in the land. After he had perpetrated a fraud on me and everything, I entered into that arrangement with him to get possession of my land.

Recross-examination:

When I got knowledge of the deed to Wright in August or September, 1889, I never said anything to Wright about it, and I never made complaint about it. I knew that Blackman had lied to me about his financial standing in 1889 and about the conveyance to Lyon and he never told me he was going to settle with Lyon, and I knew that selling the land was a fraud. I knew that he had settled with Lyon and took money from him for the property he had conveyed to me, and that was not right, and I thought it was a fraud, and I had this information in 1889. The consideration of my conveyance to him had failed. I found that Blackman had lied to me, I found that he had conveyed the Lyon property to him, and from that I claim that the consideration failed; and I knew all of the substantial facts of which I am now complaining to this court, in the summer and fall of 1889, and two years after I knew all of them and after I found out all the practices of Blackman I entered
214 into new negotiations with him. I did not return to Mr. Blackman the memorandum I had entered into with reference to following out the New York enterprise after I had returned from Chicago. I paid money to him after I received this memorandum, and this new arrangement was entered into upon the basis of the representation made by Blackman that he had 25 per cent. interest in the New York property, and I believed that representation or I would not have paid him the money, and I entered into this arrangement at a time when there were difficulties existing between Blackman and Haldane; and after I found that Blackman and Haldane were clashing I employed Haldane and paid him money, and I paid him money since, and I paid Haldane money in the fall of 1892 and the winter of 1893 and employed him as my attorney, and he acted for me in certain matters in New York.

Page 142, line 2: Defendant Wright objected to the evidence here offered of Mr. Haldane as incompetent, immaterial and irrelevant.

Intervenor's Rebuttal.

MATILDA U. WHARTON

testified as follows:

Page 143: Mr. Haldane told me himself that he was Blackman's attorney and he drew a document for me under those circumstances,

and it was signed "J. E. Blackman, by Charles Haldane, attorney." In the negotiations when I was present Haldane acted as attorney for Blackman.

215 JOHN E. BLACKMAN

testified as follows:

Page 147, line 17: Mr. Dull was fully advised of the character of our claim. The attorneys who assisted in the prosecution and investigation were Mr. Laamson, who is attorney of Calvin Brice, and a very able lawyer; Judge Smith was employed by a railway company to investigate the matter, another very able lawyer, and also Charles Winfield, who has written a book on land titles. All the information with reference to the character of the claim and all the opinions of the lawyers were given to Dull and he knew all about it. We had the opinion and brief of Governor Hoadley and he always claimed that our position was good, and the opinion of Governor Hoadley was given to Dull *and* before the deed was executed and before negotiations.

Page 148, 3rd line from bottom: Dull asked Judge Duffie if he was of the opinion that the deed could be enforced at the present time against Dull or against Lyon, if it was in existence, and my impression is that Duffie said that the deed, being a quitclaim, could be enforced.

Page 149, line 11: Dull told me that the time would soon come around when the first option in the lease with Lyon would expire, and that he wanted to enfore that lien or the claim or deed against Lyon, and that if there was any legal way of enforcing the deed or mortgage against Lyon, he wanted to do it. The arrangement was

216 I was to turn over and sell him an interest in the New York deal, a certain interest in the Hopper claim. I told him in Chicago that the first thing he had to do was to get possession of the deed. We went to New York together. The New York arrangement with him was at 219 West 53rd St. I told Dull at this time, in answer to his questions as to my opinion of the value, that if it was worth anything, it was worth eight or ten millions. "Exhibit 2" is a copy of the memorandum that evidenced the arrangement between Dull and myself. The original of that was given to Dull, that is, one of them. There were two. I kept the rough draft of it and gave another one to Dull and Dull was to take it to his office and have his clerk copy it. "Exhibit 2" is a correct copy. I have compared it. Dull took this memorandum and it correctly states our arrangement. It was not signed. On the day, I think, of the delivery to him of this memorandum he paid me money to pay some debts, and this was in conformity to this agreement. And then he wanted afterwards to add something to the contract to make it binding on the heirs, etc. He kept his original, and so far as carrying out the contract on his part he kept giving me money until I think I got from him $2,100. I do not think there was any difference between this "Exhibit 2" and the original contract as made. The $250 as provided by the contract was paid by Mr. Dull. The

firm of Hoadley, Lauterbeck & Johnson was employed and under arrangements with Hoadley, the briefs were made and the expenses and costs of the suits were arranged for, and I had all my arrangements made to prosecute the suits to final determination. Expenses were incurred and suits prosecuted and one was tried. Work was done in this case in preparing for appeal, etc.; arguments,
217 abstracts and briefs were prepared and expenses incurred. Dull never asked me for this contract back. When we got back from New York Dull wanted me to look through my papers and Haldane's papers and see if I could find the deed or mortgage I gave him for the Lyon strip. I searched for it and was unable to find it. I am acquainted with the handwriting of Charles Haldane. I have examined this paper, marked "Exhibit 9," and it is in his handwriting. Dull gave me this paper and asked me if I thought that would be the right sort of an affidavit for Haldane to swear to. I never had any conversation with Haldane about this affidavit. Dull asked my opinion about it and I suggested some changes. He told me to take this affidavit and draw one with my suggested changes. I gave it back to Dull and I have never seen it since. The case of Blackman *vs.* Riley, involving the questions in this Hopper estate claim, was submitted in the court of appeals since the execution of "Exhibit 2." I never told Dull I had 84 or 86 per cent. of the Hopper estate. "Exhibit 10" is a letter, and the signature is Mr. Dull's. I know it is his signature and know it is his handwriting. I got that letter from Governor Hoadley. Governor Hoadley told me he received this letter through the mails. Haldane was my attorney in this transaction. I depended upon him in all these transactions and relied upon him.

Cross-examination:

Page 152, bottom: Blackman did not say "There was no
218 cheating or defrauding his landlord about it," as stated in appellants' abstract. He in reality testified as follows:

Q. There was no attempt to cheat or defraud his landlord?

A. Force his landlord to reform the lease.

Q. Was there any cheating or defrauding of his landlord in it?

A. Well, I couldn't tell you that.

Page 153, bottom: The question "Do you swear *you* didn't say so" should be "Do you swear *he* didn't say so."

Redirect examination:

The expression in Dull's letter "And the money he got from my landlord Lyon he knows that it was I who made it possible for him to get it, otherwise Lyon like the rest would have paid him nothing," this refers to the money I got from Lyon for the quitclaim deed. I did not get any other money from Lyon of any kind or character. The complaint that Dull made, after I had executed this contract, was that he wanted to change it from 5 per cent. to 12½ per cent., and the consideration from $5,000 to nothing. That is all.

E. R. DUFFIE

testified as follows:

Being examined on part of intervenor Phelan, testified as follows:

"I would like to say and have the record show, if your honor please, that since I learned of this New York suit and that I would
219 necessarily become a witness in the case, I had Mr. Charles Greene, of Omaha, associated with me in the case to try it. He promised to be here last Thursday morning but informed me that he was detained by the general manager of the Burlington road, for which he is attorney, and by the general solicitor of that road, on business in connection with the new tariff law of Nebraska, and in connection with an order made by the city council to erect some viaducts over their tracks in the city of Omaha, and that is the reason he is not here to try the case. I did not expect to take any hand as attorney in the case."

Lived in Iowa for 22 years; attorney-at-law; judge for eight years.

Page 157, line 21: Afterwards I got a letter in which he said at the time he deeded this land to Phelan he instructed him that he was to hold it to secure me for what was due me and to secure Colonel Savage what was due him. This was the letter:

NEW YORK CITY, *Feb. 14th*, 1892.

E. R. Duffie, Omaha.

DEAR JUDGE: I should have written you before, but have been very busy since my return. The Riley case has been argued and submitted to the general term. Haldane made the oral argument and parties who heard him say that it was very able. I did not have the time, or at least did not think to tell you when I saw you in Chicago, what I did about the land. I was obliged to have
220 a little more money and borrowed it from Ed. Phelan. I gave him a deed to the 551 acres of Iowa land and told him to hold the title as security for the loan first, and 2nd, to hold it in trust to secure you your fees agreed upon between us, and forget whether I told him the amount, but I think I did; if I did not, you can do so, for perhaps I did not; 3rd, to hold as security in trust for Col. E. P. Savage for the amount I owe him, which is about $1,000. You had better see Ed. and go over the matter with him, for he was in a hurry when I had my talk with him and may not have thoroughly understood the details.

Now, Judge, I want you to push that suit against Wright. Prepare depositions for Haldane and send them down, also send me copy of all papers in the case as soon as filed. Gov. Hoadley is improving slowly.

Hastily yours, J. E. BLACKMAN.

Page 157, line 24: There is nothing whatever in the statement of Mr. Burdick that I bolted into the room and the first thing that I said was that I thought he could enforce his rights under that deed and if he desired you would go down to New York and do it, and if you did not win, it would not cost him anything. Nothing of the kind occurred.

Page 157, line 25: I had understood from my former talk with Blackman and my talk with Dull previous to this that after Blackman made the mortgage and executed the deed which was placed in escrow that Mr. Blackman had quitclaimed the property to Lyon.

221 Page 158, line 2: After "Whatever the law might be," insert "in relation to purchasers under quitclaim deeds."

Page 158, line 4: Dull appeared very anxious about what interest he might still have notwithstanding the sale to Lyon and he wanted my opinion about it. I never used such an expression as "high swindling" in my life.

Page 158, line 15: Mr. Dull in Chicago made no claim or statement whatever with reference to the fact that Blackman had made any representations to him in procuring the deed from him for the Iowa land. He had no complaint of any kind to make. The *only* complaint he made to me, and the only complaint was, that after he had bought the land and deeded to Mr. Blackman this 551 acres in controversy, he had afterwards sold it to Mr. Lyon, his landlord. Either myself or Blackman said to him that he had been very quiet under the circumstances and appeared to rest easy; had not taken any steps to secure his pay or to recover back this land.

Page 158, line 22: Both Blackman and Dull told me that they had arrived at a settlement of their affairs, a conclusion, and I went to a stand in the center of the room, where there was writing material and said we had better reduce it to writing right away; and they said "No," that Blackman was going back to New York with Dull and they would reduce it to writing when they got to New York, and they would draw up a written contract there.

222 Page 158, line 28: After "other services" add "which I had done Blackman."

Page 158, last line: After "I executed to him a receipt" add "and surrendered to him the contract I had with him."

Cross-examination:

Page 159, line 16: The sentence in appellant's abstract "We just lumped it off," is not correct and is not in the record, and the witness did not so state.

Page 159, line 19: He said he expected to pay for what I had done, and if $5,000 was satisfactory he would pay me that amount.

Page 160, line 1: Blackman told me that after he had sold the land to Lyon he had told Dull if he did not remove the mortgage here he was going to sell the land, and after he had sold the land to Lyon he had offered to reconvey, had even made out a deed and written to Dull that it was in Haldane's hands and he could have it by surrendering the papers he had given him, and this was after he had made the conveyance to Wright. He said Dull would not make any reply at all.

Page 161, line 17: When this amended petition was filed in October it was not the intention to prosecute the case to a final determination in the name of Blackman. In that action as between him

and Wright it was claimed that he was still the absolute owner of that property.

223 *Defendant Dull's Rebuttal.*

DANIEL DULL testified as follows, page 164, last line:

This note was simply advanced to meet his emergencies. He was to give me a contract for a half interest, and the money I had advanced him up to the time of this contract was to be taken out—that is, it was to be taken out of the whole interest, but any money that I should advance him to meet his necessities after that was to be taken out of his individual interest. The money I paid him prior to this time was not on any agreement, but to meet emergencies, necessities that he represented to me. I paid him a little money at one time there upon the memorandum. I paid him a little on that until I discovered that he did not hold the interest that he said he did, and then I did not pay him any more.

Page 165, 4th line from bottom: Of course it took Mr. Lyon some time to get over the feeling that I had with him in putting myself in such a position as I did.

Page 165, last line: After "taking the steps I did," add "with my landlord in regard to that title, declining to pay him rents, etc."

Cross-examination:

I did not have very much faith in the New York enterprise. After I found out Blackman's fraud in 1889, then I patched up our difficulties in 1892 and paid him money. I paid him this money, as I have testified before, to take care of his interest, and not
224 because I liked him. After having this opinion of him myself, after having called him a swindler, and after having had the opinion of lawyers that he had practised a fraud on me, I did not pay him that money because I liked him, and I did not pay it out of philanthropy. I paid it mainly for the purpose of getting my land back. I did swear that I paid it to him because I got an interest in the New York enterprise, and that I kept on paying until I found out he did not have 25 per cent. I did pay him all along upon the representation that he had 25 per cent.

Q. Now, "the property he turned over to you as security he got nothing for, as I understand, and the money he got from my landlord Lyon he knows that it was I who made it possible for him to get it. Otherwise, Lyon like the rest, would have paid him nothing." You wrote those lines, didn't you?

A. I did.

Q. And you signed your name to them?

A. Yes, sir.

Q. And so it was only possible for him to have gotten money through you from Lyon? That is what you mean? It is plain. Any man that runs can read. Isn't that so?

A. I don't think he could have made that deal without me.

Q. That is so plain that any man who runs can read that it was through you that he got the money from Lyon?

225 A. You can put such a construction on it as you want.
Q. What construction do you place on it?
A. I have explained it.
Q. You said it was plain so that everybody could understand it?
A. I think so.
Q. And you have said that it was by your suppression of the truth about this, keeping from Lyon the fact of your mortgage and of your deed, that this money was paid?
A. I didn't say that.
Q. You did not? Didn't you say here it was while these negotiations were pending, in your examination-in-chief a moment ago, that it was by keeping your mortgage off the record, and by your negotiations that you expected to accomplish a settlement with Mr. Lyon, and the result was that by these acts of yours he had no notice of your lien and paid the money?
A. I said I was withholding my rent.
Q. You said withholding your mortgage, too, didn't you so swear?
A. I think not, sir.
226 Q. You didn't? Did you not swear a minute ago that the mortgage was withheld so that your landlord wouldn't know anything about it?
A. Not in connection with that, I guess.
Q. Didn't you swear here, sir, that the purpose of keeping the mortgage of- the record was so that your landlord wouldn't know it?
A. I guess so.
Q. Now, then, if your landlord had known about it he would not have paid the money to Mr. Blackman, would he?
A. I presume he would not.
Q. Well, that is all.
A. I don't know whether he would or not. If the mortgage had been recorded I presume he would not.
Q. So then you sanctioned this whole proceeding in December, 1892, by crediting to yourself the fact that it was through your instrumentality that Mr. Blackman got the money from Mr. Lyon?
A. I think it was my position in the deal that got him the money.
Q. And you claimed what glory there was out of that transaction in your letter to Hoadley, didn't you?
A. I have not found very much glory in it yet.
Q. Well, you gloried over it in that letter, didn't you?

227 Objected to as impertinent, insulting to the witness, not cross-examination.

Q. Is that what you wrote, sir?
A. The letter states what I wrote.

(Witness excused.)

The letter of Dec. 15, 1892, addressed to George Hoadley, in which the following language is used, "The property that he turned over to you as security he gave nothing for, I understand, and the money he got from my landlord, Lyon, he knows that it was I who made it possible for him to get, otherwise Lyon, like the rest, would have

paid him nothing," I mailed and sent through the mails to Mr. Hoadley. (Here witness read this letter and says that the letter is correct.) I did receive a letter from Governor Hoadley in answer. I think I have it at home.

Q. Isn't it a fact that Governor Hoadley's exception he took to that was this, he said to you that "until I received your letter I had always blamed Mr. Blackman for conveying the property to Lyon, but your letter has completely exonerated him"? Didn't he so state?

A. He said a part of that, but didn't say "completely" exonerated him.

The testimony of Mrs. G. P. Kronk is not in appellants' abstract at all.

228 Mrs. G. P. KRONK,

being sworn and examined by Mr. Duffie, testified as follows:

Live in Omaha, and am acquainted with Mr. Blackman and Mr. Haldane. I am a stenographer and typewriter. I worked for Blackman in his office in New York. I know Mr. Dull, who sits there. I was with Blackman and Haldane the last week in August, 1889, and remained there until the following April. Mr. Dull was negotiating with them for a certain part of the Broadway property. Dull was in the office frequently, almost every day. The deeds and papers that were procured by Blackman from the heirs of the Hopper estate were put in a tin box and locked up in the evening and taken somewhere for safe keeping and deposit and returned in the morning, and the box was always opened in the morning. I have seen Dull examining those papers occasionally. I wrote out a great many papers for them and Mr. Haldane always acted as Mr. Blackman's attorney and signed the papers as Blackman's attorney.

Cross-examination:

I did work for both of them; wrote letters and contracts. I have been through this box and know what it contained.

Page 166, middle: The following paragraphs in letter of Daniel Dull to George Hoadley are omitted in appellants' abstract:

229 He (Blackman) succeeded for the time in his attempt upon me, but he, I think, did not succeed with Haldane, and on account of some misunderstanding with Haldane I learn that Mr. Blackman refuses to proceed further with the suits.

One of the confidence games that he played on me was that the suits must all be commenced before the 17th day of July last and unless they were commenced before that date it would be a serious matter, although possibly not fatal. This he continually brought before me when he wanted money; also that I would do all in my power to harmonize Haldane and get him to make terms. Haldane finally agreed to finish making out the necessary papers to bring the suits for $25. I handed this amount to Blackman to convey to Haldane. Blackman gave Haldane $10, kept the balance and told Haldane

that he could only get from me the $10, so Haldane states, and when Haldane learned the fact he wrote Blackman demanding his money, but I believe did not get it or any reply. I mention this to show you what Blackman will do for $15.

Now, all that he (Blackman) really wants is protection in his methods and support for his different families, if he still has more than one, the expense of the suits sustained, the necessary influence to overcome the prejudice on account of the nature of the suits, together with the prejudice justly due himself in his position with his altogether too well-known methods, and that he holds a large interest, control the matter, be able to say that when his whims or unscrupulous methods are not sustained or objected to, that the
230 enterprise will stop or start at his will, while neither prejudice nor his agreement entitles him to such interest. Besides, I think his place is in the background, out of sight, for his presence in court is apparently obnoxious and injurious.

I learn from Haldane that a contract was made and that Blackman is finding some fault with it. In my opinion if anything further is done, it will be necessary to first bring the suits, make Blackman fulfill his agreement and settle for all his irregularity as far as is possible for him to do; then put him in the background where he belongs, as it is evidently injurious to any case for him to be either seen or heard in connection with the same.

E. R. DUFFIE AND
WRIGHT & BALDWIN,
Attorneys for Appellees.

231 Said cause was submitted to the supreme court of Iowa on the foregoing record at the October, 1895, term of said court, and on the 21st day of January, 1896, said court filed its written decision (opinion), the same being in the words and figures following, to wit:

232 "In the Supreme Court of Iowa.

JAN. 21, 1896.

JOHN E. BLACKMAN, Appellee,
vs.
GEORGE F. WRIGHT *et al.*, Appellees; DANIEL DULL and NELLIE M. DULL, Appellants.

Appeal from Pottawattamie district court—Hon. H. E. Deemer, judge.

Flickinger Bros., for appellants.
Wright & Baldwin and Winfield S. Strawn, for appellees.

KINNE, *J.*:

1. The pleadings in this case are elaborate and the facts are many and somewhat complicated.

A thorough understanding of the case and of the grounds upon which our conclusions rest demand a quite full statement touching

the matters in controversy. In 1887 plaintiff, a resident of the State of Nebraska, became acquainted with some of the heirs of one
233 John Hopper, who died in the State of New York in 1706.

These Hoppes heirs, some two hundred in number, claimed an interest in certain land fronting on Broadway, in the city of New York. This claim seems to have been based upon the fact that in 1703 the Bloomingdale road, in said city, had been laid out upon land belonging to said Hopper, which road was in 1847 so widened and straightened as to leave a strip of ground lying between the lots fronting upon the old road and the east line of the new road (called Broadway), which, in accordance with an act of the legislature of New York, reverted to the owners of the abutting lots.

Plaintiff undertook for a half interest therein to recover this property for some of the Hopper heirs.

In 1888 plaintiff interested E. R. Duffie, an attorney, residing in Omaha, Neb., in his venture, and Duffie went to New York city and spent some time in investigating the records, titles, etc. For his services in this behalf Duffie afterwards demanded over $5,000.

Thereafter plaintiff made an arrangement with Charles Haldane, then of Council Bluffs, Iowa, and a member of the firm of Wright, Baldwin & Haldane, whereby Haldane was to share equally with plaintiff in the enterprise, and was to and did go to New York city to investigate the matter, to procure deeds from the Hopper heirs, and to prosecute suits in furtherance of their joint venture. Haldane for some time after his removal to New York city continued his firm relations with Wright and Baldwin, who were also interested in the contract with plaintiff.

Plaintiff and Haldane in the course of their investigations found that Daniel Dull, the defendant herein, was in pos-ession of a portion of the strip of land on Broadway, heretofore mentioned, which plaintiff claimed was the property of these Hopper heirs. Dull was a tenant of one Lyon, who held title to the land. Twenty-four feet of the Broadway front of his premises *was* embraced in this disputed tract.

Dull had erected a building upon this land, and by the terms
234 of his lease his landlord had an option at a certain time to take the building and pay Dull $22,000 for it.

The lease required Dull to erect a building to cost not less than $25,000, but in fact the building had cost $45,000.

In 1889 plaintiff and Haldane met Dull and proposed to sell him the strip of ground belonging to the Hopper heirs.

Dull informed them that he was only a tenant. Dull knew Wright. The time when Lyon, the landlord, might exercise his option was near at hand and Dull was anxious to unload the building onto his landlord for $35,000.

He apparently saw in the proposition of Haldane and plaintiff the opportunity to further his designs in that direction and entered into negotiations with them for the purchase of the interest which they represented in this disputed strip of ground which he was occupying. His object, no doubt, was to acquire the control of the Hopper title and thus force his landlord to his terms. The result

of the negotiation was that on June 28, 1889, Dull conveyed to plaintiff by warranty deed five hundred and fifty-one acres of land in Pottawattamie county, Iowa, and was to remove therefrom a mortgage for ten thousand dollars which covered the tract of land conveyed and other lands.

He never did remove this incumbrance.

As a part of the deal Blackman executed to Dull a quitclaim deed to this disputed strip of ground which the latter was occupying as a tenant, which was placed in *escrow* with one King, who was a solicitor for Dull in New York city.

As a part of the same transaction Blackman gave Dull a mortgage on said disputed strip for $10,000, which was delivered to Dull. It is not clear as to how long this deed was to be held in *escrow;* probably, however, until Dull secured a settlement with his landlord or until it was determined in the litigation which was expected to follow that Blackman had title to the land. Dull, Blackman, and Haldane then set about getting the landlord to purchase the brick building which Dull had erected upon the lot, and also were going to convey to the landlord the title which Blackman had discovered to be in and had acquired from the Hopper heirs.

There can be no doubt that so far in these negotiations Blackman and Haldane were acting as agents for Dull.

Lyon, the landlord, however, did not accede to their demands.

Dull all of this time had kept from his landlord the knowledge that he, Dull, already had a mortgage on the disputed ground.

Finally, either Blackman or Haldane, or perhaps both, without Dull's knowledge, sold to the landlord for $10,000 the same strip of land which they had theretofore mortgaged to Dull.

It is proper to say that when Dull entered into negotiations with Blackman and Haldane he claims that Blackman represented to him that he, Blackman, was a man of means; that he had then eighty-six per cent. of the Hopper title, and that he would prosecute the matter with due diligence against the occupants and owners of the strip. This claim is not acceded to by Blackman. Prior, however, to deeding this strip to Lyon, the landlord, and on August 8, 1889, Blackman had conveyed the Iowa land received from Dull by warranty deed to George F. Wright, of the firm of Wright, Baldwin & Haldane; which deed was duly recorded. Blackman claims that this deed was made under an arrangement whereby Wright was to advance not exceeding $10,000 to further the enterprise. Wright and Baldwin claim this deed was to secure about $5,000 already advanced to Haldane, as well as money afterwards to be advanced.

It is reasonably clear from the evidence that little, if any, money was advanced by them to Blackman after this deed was executed.

Wright mortgaged the land to Askwith, a clerk in his office, for $5,500. The latter, however, never advanced any money, the mortgage being made to enable Wright to raise money from other parties. Oct. 1, 1889, Blackman conveyed the same land by warranty deed,

for a consideration of $15,000, to one Savage, of Omaha, and
236 Jan. 1, 1891, Savage reconveyed it to Blackman. Jan. 30, 1892, Blackman conveyed the same land to one Phelan, of Omaha, by warranty deed; which conveyance seems to have been originally made to secure a small loan of $75.00.

Aug. 27, 1892, Phelan mortgaged the land to Duffie for $5,500 to secure payment of his fees as for attorney for services which he had rendered Blackman. On Sept. 15, 1892, it was agreed between Blackman and Phelan that this deed to the latter should convey absolute title, and that Phelan should pay Wright his claim for money advanced Haldane, Duffie's claim, and a claim for some $1,000 or more held by Savage, of Omaha, against Blackman, and to pay Blackman $500 and to do certain other acts in the premises.

Sept. 22, 1892, Dull deeded this Iowa land to his wife, Nellie M. Dull. In Feb., 1892, Blackman began this action against Wright alone to cancel the deed he had made to Wright.

Blackman then went to Chicago and wrote Dull to meet him there with a view of settling their troubles. Dull met him, and Duffie was also present.

From 1889 to 1892 Dull seems to have been advancing money to Blackman and Haldane to meet their necessities and to aid them in prosecuting their claims.

There is dispute in the testimony as to whether a settlement was in fact reached in Chicago between Dull and Blackman.

That some sort of an agreement was made between them or was consummated after they both returned to New York seems manifest from the fact that Dull kept on advancing money to them, no doubt on the faith also that he would have an interest in the Hopper title generally, as the evidence strongly tends to show. Dull admits that he was to stand by Blackman in the prosecution of his suit against Wright for the recovery of the land and claims Blackman agreed to reconvey it to him.

Blackman and Haldane fell out and Dull undertook to reconcile their differences. Finally he determined that they were simply using him for the purposes of extorting money; that Black-
237 man's representations were untrue, and ascertained that he had in the Iowa case amended his petition, asking to have his title quieted as against Dull as well as against Wright.

Thereupon he appeared in this case and filed an answer and cross-petition. On Nov. 3, 1892, Dull began suit in Westchester county, N. Y., to set aside his deed which he had made to the Iowa land, and in said suit an injunction was issued. In this suit Blackman and his wife, Wright, Askwith, Phelan, and Duffie were all made parties defendant.

Blackman only was served in the State of New York, Wright and Askwith were served in Council Bluffs, and Duffie and Phelan in Omaha. None of the defendants save Blackman and wife ever resided in the State of New York.

Blackman appeared in the New York suit and made defense. The other defendants never appeared.

In this suit a final decree was entered setting aside the conveyance

from Dull to Blackman and ordering a reconveyance of the property, and enjoining each of the defendants from prosecuting this action or conveying or encumbering said land.

The decree is pleaded in this action by Dull as an adjudication against all of the defendants.

Such pleadings were filed by the various parties that the following issues were presented for the determination of the trial court in the cause at bar.

1. Alleged fraud of Blackman practiced on Dull in representing that he, Blackman, had eighty-six per cent. of the title of the Hopper heirs, it being claimed in fact that he held only fifty-four per cent.

2. That Blackman reported that he was a man of means and able to prosecute the litigation in New York. It is said that this is untrue and that Blackman was insolvent.

3. That there was a failure of consideration for the deed from Dull to Blackman, and hence it should be set aside.

4. The effect of the decree pleaded.

The district court entered a decree that if the mortgagee, Holcomb, elected to foreclose he should first exhaust the lands embraced
238 in his mortgage, which are not in controversy in this action; that the deeds from Blackman to Wright and from Dull to his wife be set aside and cancelled.

That the mortgage made by Wright to Askwith be cancelled.

That the title to the lands be quieted in the intervenor Phelan as against the plaintiff and all defendants and other intervenors, and that Phelan be decreed to be the absolute owner of the land, subject only to the rights of Holcomb to satisfy his mortgage out of said land after first exhausting the other lands covered thereby; also subject to the mortgage held by Duffie and the claim for $1,000 held by Savage.

The defendants Dull alone excepted and appeal.

2. As Dull and wife only appeal, we are conserned only with the question as to whether such fraud was practiced upon Dull by Blackman as to warrant the setting aside of the conveyance of the Iowa lands by the former to Blackman; and, of so, whether the other claimants to this land took their title with notice of the fraud or with knowledge of such facts as should be held to put them upon inquiry touching it.

Passing for the present the consideration of the effect of the New York judgment, what evidence is there of fraud?

The first item of fraud charged by Dull is that Blackman represented to him that he owned eighty per cent. of the Hopper title, when in fact he had only fifty-four per cent.

Blackman denies making any such representations.

Haldane testifies that Blackman only had fifty-four per cent. of the title. Dull's claim in this respect cannot be said to be established unless we may consider Haldane's evidence.

Now, Haldane's knowledge as to Blackman's title was derived only from Blackman himself or from papers which Blackman had placed in Haldane's possession. At this time Haldane was Black-

man's attorney. The information which Haldane had touching this matter was obtained confidentially and in his professional capacity to enable him to properly perform his professional duties on behalf of his client. Haldane's evidence cannot therefore be considered.

239 Code, section 3643.

Dull also testifies that Blackman represented that he was a man of means and had land in Nebraska.

So far as we can discover from the record, there is no evidence whatever that Blackman did not have the Nebraska land, nor is there any evidence that he was not a man of means, unless it be implied from the fact that he was often borrowing money. The mere fact that Blackman borrowed money shortly after this deal with Dull is no evidence of insolvency.

Were it otherwise it would not be a difficult matter to establish the fact that one-half of the men in every community were insolvent, because they were borrowers of money.

We conclude, then, that the alleged fraud has not been established by a preponderance of the evidence, unless the decree of the New York court is conclusive upon that question.

3. The decree of the supreme court of New York is pleaded as a complete adjudication of the rights of the parties in this controversy and as a bar to the prosecution *to* this suit.

Now, if it in fact be such, than it is clear that the decree in the court below in this case should have been in favor of the Dulls. Before entering into a discussion as to the legal effect of this New York decree, it will be well to ascertain just what the court undertook to do by it. 1. It ordered Blackman to execute a deed to Dull, conveying the Iowa lands; and, 2, it enjoined all of the defendants in that proceeding from prosecuting this action in Pottawattamie county, Iowa, affecting title to said lands; and, 3, it enjoined said defendants from conveying or encumbering said lands.

It would appear that this decree is one *in personam* and not *in rem*. It does not purport to act upon the subject-matter of this suit—the land.

True, it directs a conveyance of the land by Blackman to Dull, but it nowhere provides for the making of any such conveyance in the event Blackman shall refuse to do so, and we think it cannot be held to settle the title to said land as between the parties

240 now contesting the same.

Another thing of interest about this decree is the fact that by it relief is undertaken to be granted to Dull long after the pleadings and evidence in the case show that he had parted with all his interest in the land, nor was his grantee, the real party in interest, substituted in said suit.

The New York suit was instituted by Dull on Nov. 3, 1892.

The decree therein was entered in May, 1893. Now, Dull had conveyed the land to his wife many months before this suit was instituted. He did not have the legal title when he began the suit or when the decree was entered.

How a decree, entered under such circumstances, in favor of Dull could confirm the title in him to land the title to which was by his voluntary and unimpeached act placed in another person is difficult to understand. It is contended, however, that Dull, having executed to his wife a deed with covenants of warranty, might properly prosecute an action to reinvest himself with the title to the land.

We do not find it necessary to determine that question.

4. Now, it will be remembered that neither Phelan, Wright, Askwith, Savage, or Duffie resided within the State of New York, neither of them were served in that State, and neither of them appeared in that action.

Before Dull began that action Blackman, his grantee, had deeded this Iowa land, first to Wright and afterwards to Phelan.

So that when the New York suit was instituted, as well as when the decree therein was entered, the legal title to the land was either in Dull's wife or in Phelan or Wright.

The grantees of Blackman, as we have seen, were at no time within the jurisdiction of the New York court.

The land was not within its jurisdiction. The only defendant within its jurisdiction had deeded the land to parties in Iowa, thereby divesting himself of all interest in it.

Dull, then, by his New York decree got nothing, obtained no rights, at least as against any one save Blackman.

241 The latter's grantees, having acquired title long before the New York suit was instituted, could not be effected by the decree thus rendered therein. Under our law, in such a case to affect the title to this land, even if suit had been instituted in this State, it would have been necessary to have made Blackman's grantees parties defendant.

They were made parties defendant, but were not within the jurisdiction of the New York court, and are therefore wholly unaffected by its decree.

Swan *vs.* Clark, 36 Iowa, 560.

Now, counsel for appellant argue with great zeal that the New York decree was binding as between Dull and Blackman, and place stress upon the cases of—

Massie *vs.* Watts, 6 Cranch, U. S., 148.
Burnley *vs.* Stephenson, 24 Ohio St., 474.
Mills *vs.* Duryea, 7 Cranch, U. S., 481.
Hampton *vs.* McConnel, 3 Wheaton (U. S.), 234.
Gilliland *vs.* Inabint, 60 N. W. Rep. (Ia.), 211.

Now, a consideration of some of these cases will serve to show that they are not applicable to the case at bar.

The leading case, which all others follow, is the Massie case.

That was an action to compel Massie to convey to Watts lands located in the former's name, but within a location made under a land warrant owned by O'Neal and assigned to Watts, and which was placed in Massie's hands as a common locator of lands.

These lands lay in Ohio and the action was brought in the State of Kentucky, where the parties resided.

Clearly, here was a case of trust created, and the court decreed that Massie, in whom the title vested, should convey to Watts. The decree of itself did not act upon the land; it simply provided for the doing — an act by the party which, when done, would operate to transfer the title.

If Massie refused to obey the decree, he might be punished for contempt, but the title would remain as before.

242 In the Kentucky case it was held that the action was not *in rem*, but *in personam*, for the purpose of enforcing a personal obligation of contract or trust.

And so it is said in Hart *vs.* Simpson, 110 U. S., 155: "It is clearly not a judgment *in rem*, establishing a title in the land, but operates *in personam* only." And in the same case, in speaking of the equity power of the court, it is said: "It has no inherent power by the mere force of its decree to annul a deed or to establish a title."

See McGregor *vs.* McGregor, 9 Iowa, 65.

Without further discussing this phase of the question, we conclude that this New York judgment is not binding upon these parties, who were not within this jurisdiction, so as to effect the title to land in this State, and we need not determine as to whether that judgment was effective as against Blackman.

Much more might be said in this connection and a multitude of authorities cited, but it is not necessary so to do.

5. We have said that fraud on the part of Blackman has not been so established as to warrant a court in setting aside the conveyance made by Dull to Blackman.

That conclusion is decisive of the case, and we might rest our judgment upon it alone. There are, however, reasons which show that even if fraud had been established, still Dull is not in a situation to take advantage of it.

It may be profitable to briefly consider some of them.

It is elementary doctrine that one who would rescind a contract on the ground of fraud should act promptly.

Now, what did Dull do? He confesses that on October, 1889, or shortly thereafter, he knew that Blackman had quitclaimed to Dull's landlord the very tract of land on Broadway which he had previously sold to Dull. Did he then take such steps as a man ordinarily would who had discovered that a gross fraud had been

243 practised upon him? He proceeded to advance money to Blackman and Haldane to aid them in prosecuting their claims; he goes to Haldane to get the deed which was deposited in *escrow*, and which King had turned over to Haldane, and which the latter had destroyed. He procures Haldane to make an affidavit as to its loss; at the interview in Chicago he asks Duffie touching his situation with reference to his claim against this New York property, and is told that as his landlord holds by a quitclaim deed, he, Duffie, thinks his mortgage and his claim is a better claim than that of his landlord.

Dull appears to have acted upon this advice to the extent of putting himself in a position to prove the execution of the deed. He evidently then had no thought of setting aside his deed to Blackman for the Iowa land.

He admits that about two weeks after he left Chicago he and Blackman "came to some sort of an understanding" touching Blackman's proposition to give Dull an interest in the New York enterprise.

And, though he claims no settlement was made between him and Blackman, he admits he advanced the latter about three thousand dollars thereafter. Dull's whole course of conduct after his discovery of the alleged fraud, and which is evidenced by many acts of his, was only consistent with the theory that he expected to have an interest with Blackman in the New York enterprise, and to prosecute his claim against his landlord for his interest in the title to the Broadway property, which he, Dull, occupied as a tenant.

If such was not his intent, then he was speculating as to whether he could thus realize the most for himself or whether he might in the end, if it seemed more desirable, resort for relief to his action to set aside his deed to Blackman.

Such a course is not consistent with the duty of one who claims to have been defrauded to promptly act in the premises.

He cannot be thus permitted to play fast and loose.

His own conduct is inconsistent with his present claim.

After sleeping upon his rights, if he had any, for over three
244 years, he is in no situation to complain if relief is not granted to him.

6. Very many other matters are discussed by counsel, such as the effect upon Dull of his failing to record his mortgage on the New York property; whether Phelan was a good-faith purchaser of the Iowa land; whether Savage and Duffie are in a situation to be protected as was done by the court below.

Now the length of this opinion precludes the separate discussion of these and many other questions raised by the counsel.

We have examined all of them and we are fully satisfied, in every particular, with the decree rendered by the district court.

The conclusion we reach is that whatever may be the real merits of Dull's claim he has failed to establish it by the evidence; that his conduct, even if he had established his claim, has been one of acquies-ence in the alleged fraud and utterly inconsistent with the thought that he expected to exercise a right to rescind his contract of conveyance, and that Phelan, Savage, and Duffie have acquired interest in the Iowa land which, under the circumstances, should be protected.

Appellee's motion to strike the denial of their abstract is overruled. The decree, therefore, of the district court is in all respects affirmed.

Deemer, J., having tried this case below, takes no part in its consideration in this court."

And on the same day a final judgment was rendered in said supreme court, and the following is a true and correct copy of the record thereof, to wit:

245 "JOHN E. BLACKMAN *vs.* GEORGE F. WRIGHT *et al.*, DANIEL DULL, and NELLIE M. DULL, Appellants. } Appeal from Pottawattamie Dist. Court.

In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the dist. court.

It is therefore considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellants Daniel Dull and Nellie M. Dull pay the costs of this appeal, taxed at $104.75, and that execution issue therefor."

245½ And afterwards there were filed in the office of the clerk of said court a petition for writ of error, writ of error, bond, citation, and assignment of error, the originals of which are hereto attached as a part of this transcript and true and correct copies thereof have been retained in said clerk's office.

246 Filed Jun- 2, 1896. C. T. Jones, clerk supreme court.

In the Supreme Court of Iowa.

JOHN E. BLACKMAN, Appellee, *vs.* GEORGE F. WRIGHT, E. R. DUFFIE, and ED. Phelan, Intervenor, Appellees; Daniel Dull and Nellie M. Dull, Appellants. } Petition for Allowance of Writ of Error.

To the honorable judges of the supreme court of Iowa:

The defendants and appellants in the above-entitled action, Daniel Dull and Nellie M. Dull, pray this court for the allowance of a writ of error to the Supreme Court of the United States for the reason that a Federal question is involved therein, viz:

1st. Whether or not, in disregarding the judgment and decree of the supreme court of New York offered in evidence, this court violated the provisions of section I, art. IV, of the Constitution of the United States.

2nd. Whether or not, in considering the judgment of the supreme court of New York and its effect upon the parties thereto, the court disregarded the provision of section 905 of the Revised Statutes of the United States.

FLICKINGER BROS.
Attorneys for Daniel Dull and Nellie M. Dull, Appellants.

[Endorsed:] # 17568. Supreme court Iowa. John E. Blackman, appellee, *vs.* Geo. F. Wright *et al.*, appellees; Daniel Dull *et al.*, appellants. Petition for writ of error. Flickinger Bros., att'ys for appellants.

247 Filed Jun- 2, 1896. C. T. Jones, clerk supreme court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the United States for the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between John E. Blackman, plaintiff, and George F. Wright, E. R. Duffie, Daniel Dull, Nellie M. Dull, *et al.*, defendants, and Ed. Phelan, intervenor, wherein was drawn in question a right or privilege under the Constitution of the United States and the decision was against such right or privilege so set up, a manifest error hath happened, to the great damage of the said Daniel Dull and Nellie M. Dull, defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 30th day of June, 1896, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Seal U. S. Circuit Court, Southern District Iowa.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 30 day of May, A. D. 1896.

EDWARD R. MASON,
Clerk U. S. C. C., S. Dist. of Iowa.

Allowed:
JAS. H. ROTHROCK, *Judge.*

248 Filed Jun- 2, 1896. C. T. Jones, clerk supreme court.

Bond.

Know all men by these presents that we, Daniel Dull and Nellie M. Dull, are held and firmly bound unto John E. Blackman, George F. Wright, E. R. Duffie, and Ed. Phelan in the full and just sum of two hundred dollars, to be paid to the said parties, their executors, administrators, or assigns.

Sealed with our seals this twenty-sixth day of May, one thousand eight hundred and ninety-six.

Whereas lately, at a term of the supreme court of the State of Iowa, in a suit pending between John E. Blackman, plaintiff, and Geo. F. Wright, E. R. Duffie, Daniel Dull, and Nellie M. Dull, defendants, and Ed. Phelan, intervenor, judgment was rendered

against the said Daniel Dull and Nellie M. Dull, and they having prayed for and obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John E. Blackman, Geo. F. Wright, E. R. Duffie, and Ed. Phelan, intervenor, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday of October next:

Now, the condition of the above obligation is such that if the said Daniel Dull and Nellie M. Dull shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise in full force and effect.

Dated May 27th, 1896.

DANIEL DULL AND
NELLIE M. DULL,
By FLICKINGER BROS.,
Their Attorneys.
W. E. HAVERSTOCK, *Surety.*

248½ STATE OF IOWA, } ss:
Pottawattamie County, }

I, F. L. Reed, clerk of the district court in and for said county and State, certify that the surety on the within bond *are* fully responsible for the amount named, and if presented to me I would approve and accept the same.

Witness my hand and the seal of said court this 26th day of May, 1896.

[Seal of the District Court, Pottawattamie Co., Iowa.]

F. L. REED,
Clerk District Court.

[Endorsed:] Bond. The within bond approved May 27, 1896 Jas. H. Rothrock, ch. justice sup. court of Iowa.

249 Filed Jun- 2, 1896. C. T. Jones, clerk supreme court.

Citation.

UNITED STATES OF AMERICA, ss:

To John E. Blackman, Ed. Phelan, E. R. Duffie, Geo. F. Wright, or to W. S. Strawn, E. R. Duffie, and Wright & Baldwin, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa wherein John E. Blackman is plaintiff and George F. Wright Daniel Dull, Nellie M. Dull, E. R. Duffie are defendants, and Ed

Phelan, intervenor therein, and wherein Daniel Dull and Nellie M. Dull are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Des Moines, Iowa, this 28th day of May, A. D. eighteen hundred and ninety-six.

JAS. H. ROTHROCK,
Chief Justice of the Supreme Court of the State of Iowa.

We hereby accept service of the foregoing citation this 29th day of May, 1896.

WINFIELD S. STRAWN,
WRIGHT & BALDWIN,
Attorneys for Defendants in Error.

250 Filed Jun- 2, 1896. C. T. Jones, clerk supreme court.

In the Supreme Court of Iowa.

JOHN E. BLACKMAN, Appellee,
vs.
GEO. F. WRIGHT, E. R. DUFFIE, ED. PHELAN, Intervenor, *et al.*, Appellees; Daniel Dull and Nellie M. Dull, Appellants.
} Assignments of Error.

Come now Daniel Dull and Nellie M. Dull, appellants in the action above entitled, and allege that there is manifest error on the face of the record in this:

Assignments of Error.

1st. The court erred in paragraph 2 of the opinion in investigating the evidence of fraud between Dull and Blackman and holding that the fraud had not been established, for that the question of fraud had been expressly adjudicated and determined as between these parties by the supreme court of New York.

2nd. The court erred in paragraph 3 of the opinion in holding that the New York decree did not settle the title to the Iowa lands as between the parties thereto.

3rd. The court erred in par. 4 of the opinion in holding that Blackman, at the time of the trial of the New York suit, had divested himself of all interest in the Iowa land.

4th. The court erred in par. 4 of the opinion that by the New York decree Dull obtained no rights as affecting his interest in the Iowa land.

5th. The court erred in par. 4 of the opinion in holding that the rights of Phelan and Duffie were not in any manner affected by the New York decree.

251 6th. The court erred in par. 4 of the opinion in holding *the* the New York court by its decree had no jurisdiction to affect the title or equities relating to the Iowa land.

7th. The court erred in par. 4 of the opinion in holding that unless a conveyance was made under the New York decree the title to the Iowa land could not be affected thereby.

8th. The court erred in par. 5 of the opinion in holding that Dull had acquiesced in the fraud of Blackman, for the reason that all the matters relating thereto had been expressly adjudicated by the New York decree.

9th. The court erred in par. 5 of the opinion in holding that Dull was concluded by laches and acqüiescence in the fraud of Blackman, for the reason that these matters, as well as all other matters in the controversy between Dull and Blackman, had been expressly adjudicated by the New York decree.

10th. The court erred in par. 6 of the opinion in holding that Dull, notwithstanding the adjudication of the New York supreme court, had been guilty of laches and acquiescence in the alleged fraud, and that by reason thereof was barred of any recovery.

11th. The court erred in holding in par. 6 of the opinion that Phelan, Savage, and Duffie were in no manner affected by the New York decree.

12th. The court erred in holding in par. 6 of the opinion that Phelan, Savage, and Duffie had acquired interests in the Iowa land which entitled them to protection.

13th. The court erred in holding under the pleadings and evidence that Phelan, Savage, and Duffie had any other or different interests in the Iowa lands than their fraudulent grantor, Blackman.

14th. The court erred in refusing to give to the decree of the supreme court of New York the full faith and credit to which it was entitled under section I, article IV, of the Constitution of the United States.

15th. The court erred in refusing to give to the decree of the New York supreme court the full faith and credit to which it was entitled under section 905 of the Rev. Statutes of the United States.

16th. The court erred in not entering up a decree in favor of appellants as prayed in their cross-petition.

FLICKINGER BROS.,
Attorneys for Daniel Dull and Nellie M. Dull, Appellants.

[Endorsed:] # 17568. Supreme court Iowa. John E. Blackman, appellee, *vs.* Geo. F. Wright *et al.*, appellees; Daniel Dull *et al.*, appellants. Assignments of error. Flickinger Bros., att'ys for app's.

252 STATE OF IOWA, *ss:*

I, C. T. Jones, clerk of the supreme court of Iowa, hereby certify that the foregoing is a full, true, and correct transcript of the record, decision (opinion), and final judgment in said supreme court in the foregoing-entitled cause as full, true, and complete as the same are of record in my office.

I further certify that I have retained in my office true and correct copies of petition for writ of error, writ of error bond, citation, and assignment of error, and that the originals thereof are hereto attached and made a part of the return to said writ, and this return is made in obedience to said writ of error.

In testimony whereof witness my signature and the seal of said court, at Des Moines, Iowa, this 3d day of June, 1896.

Seal of the Supreme Court Iowa.

C. T. JONES,
Clerk Supreme Court of Iowa.

Endorsed on cover: Case No. 16,324. Iowa supreme court. Term No., 192. Daniel Dull and Nellie M. Dull, plaintiffs in error, *vs.* John E. Blackman, Ed. Phelan, E. R. Duffie, & George F. Wright. Filed June 23rd, 1896.